STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.,	**)**	
TCG Illinois and TCG Chicago	**)**	
	)	
Petition for Arbitration of Interconnection Rates,	**)**	
Terms and Conditions and Related Arrangements	**)**	**Docket 03-0239**
With Illinois Bell Telephone Company d/b/a/	**)**	
SBC Illinois Pursuant to Section 252(b)	**)**	
of the Telecommunications Act of 1996	**)**	

BRIEF IN REPLY TO EXCEPTIONS OF AT&T COMMUNICATIONS OF ILLINOIS, INC., TCG ILLINOIS AND TCG CHICAGO

Cheryl Urbanski Hamill
Douglas W. Trabaris
AT&T Communications of Illinois, Inc.
222 West Adams Street, Suite 1500
Chicago, Illinois 60606

Owen E. MacBride
Samantha C. Norris
Schiff Hardin & Waite
6600 Sears Tower
Chicago, Illinois 60606

Attorneys for
AT&T COMMUNICATIONS OF ILLINOIS, INC.
TCG ILLINOIS and TCG CHICAGO

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INTRODUCTION

This is the Brief in Reply to Exceptions to the Administrative Law Judges' Proposed Arbitration Decision ("Proposed Order" or "PO") of AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago (referred to herein collectively as "AT&T"). Illinois Bell Telephone will generally be referred to as "SBC" or "SBC Illinois". The Interconnection Agreement will be referred to as the "ICA" or the "Agreement". Each party's initial brief and reply brief will be referred to as "Init. Br." and "Rep. Br." and each party's brief on exceptions will be referred to as "BOE."

A. GENERAL TERMS AND CONDITIONS (GTC) ISSUES

GTC Issue 7: Should CLECs be responsible for the cost associated with changing their records in SBC-Illinois' systems when CLECs enter into a merger, assignment, transition, etc., agreement with another CLEC?

SBC asserts that the PO decides an issue that is not before the Commission in this arbitration by adopting Staff's recommendation that the BFR process should be used to determine the costs that SBC will incur to modify customer account records in the event of a merger, assignment, or similar transaction involving AT&T and another carrier. SBC claims that the only issue before the Commission was whether AT&T or SBC should be responsible for the costs of modifying records in the event of such a transaction. (SBC BOE, pp. 2-7; see PO, p. 19) The Commission should reject SBC's exception and adopt the PO's resolution of GTC Issue 7. Alternatively, if the Commission determines that the only issue it can decide is whether AT&T or SBC should be responsible for the costs, the Commission should conclude that SBC should be responsible for such costs.

As the PO notes, "AT&T disputes that it should be responsible for the costs incurred by SBC to change the OCN/ACNA records, but nevertheless accepts Staff's proposal to determine the costs through the BFR process." (PO, p. 19) AT&T accepted Staff's proposal as a reasonable resolution of this issue, and thus did not take exception to the Proposed Order's conclusion on GTC Issue 7. In summary, AT&T disputes that it should be responsible for the costs of SBC's records work in the event of a merger, acquisition or similar transaction, but is willing to accept responsibility in principle so long as there is a reasonable process in place to determine in advance what those costs will be before AT&T is required to pay them, and to allow AT&T to dispute the costs (and the extent of the related work SBC proposes to do) before SBC does the work and bills AT&T. The BFR process, with which the parties (and the

Commission) are familiar as a process for determining in advance the costs of particular work or services SBC will provide for a CLEC, is an appropriate process, and one that is acceptable to AT&T, for this purpose.[1]

SBC's reading of and reliance on a single sentence of Section 252(b)(4)(A) of the Telecommunications Act to support its position (SBC BOE, p. 3) is much too restrictive. Certainly the amount of the costs and how they will be determined is subsumed within the question of which party should be responsible for the costs. SBC's argument is similar to arguing that if SBC said the charge for a service should be $10 and AT&T said it should be $0, the Commission would be precluded from finding that the charge should be $6.

Moreover, Section 252(b)(4)(C) authorizes the Commission "to resolve each issue . . . by imposing appropriate conditions as required to implement subsection (c) [the "standards for arbitration"] upon the parties to the agreement." Here, the PO determines that AT&T is responsible for the costs on condition that the BFR process is used to determine the costs.

Further, the parties in fact included in GTC Issue 7 the topic of what tasks and related costs are involved and how the costs will be determined. AT&T's Statement of Position for GTC Issue 7 (included in Appendix B to the Arbitration Petition) contended that SBC Illinois is already compensated for the records costs in question through the nonrecurring and recurring charges that AT&T pays when it submits order to SBC, i.e., that SBC incurs no incremental, uncompensated records costs in the circumstances presented by GTC Issue 7. SBC Illinois' Statement of Position for GTC Issue 7 stated that ". . . Any change to a company code requires

[1]Had SBC proposed an alternative to the BFR process for identifying the proposed costs and work scope for the records change work associated with a merger or acquisition in advance of doing the work and billing AT&T for the costs, AT&T would have to considered the alternate proposal. However, as the PO correctly points out, no such proposals were forthcoming from SBC. (PO, p. 19)

service order activity on each and every end user account and circuit in order to update the multitude of systems. . . . When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by the winning Carrier." As AT&T witness William West correctly noted:

> At issue in GTC 7 is whether there is any basis for SBC Illinois to require a CLEC to pay for SBC internal system record changes in circumstances where a CLEC enters into a merger or comparable transaction with another CLEC. Mr. Hanson's testimony accurately points out that SBC Illinois' recommended solution – imposition of service order change charges on a individual record basis – "would lead to SBCI over-recovering its costs." To address this issue, Mr. Hanson's proposes that the parties be required to utilize the Commission's bona-fide request ("BFR") process (established in Commission Docket 01-0614) to ensure adequate scrutiny of ILEC cost recovery measures associated with CLEC mergers. AT&T believes that Staff's proposal is acceptable and would provide AT&T and other CLECs with needed protection in this area. (AT&T Ex. 1.1, pp. 6-7)

Staff witness Hanson had concluded that SBC's approach could lead to SBC over-recovering its costs because it should be less costly to process hundreds of service orders (i.e., revisions to records) at one time as opposed to one at a time. (Staff Ex. 3.0, p. 5) AT&T agreed with Mr. Hanson on this point (see AT&T Init. Br., p. 23), whereas SBC continues to dispute it substantively (see SBC BOE, p. 4) – further evidence that the extent of the work and costs required, and how those costs would be determined, in the situation presented by GTC Issue 7, was in dispute between the parties. Further, AT&T does not agree with SBC's assertion that "The parties did not foresee such a disagreement" concerning "the quantification of these costs." (SBC BOE, p. 5) Concerns about being presented with a gigantic bill by SBC for records change work that SBC performed, but that AT&T believed was unnecessary or excessive, after the work is already done, is one of the reasons AT&T desired not to be charged with responsibility

for these costs, and why AT&T finds Staff's (and the PO's) recommendations to provide an acceptable resolution of this issue.

In summary, the Commission should reject SBC's exception and should adopt the PO's conclusion to resolve GTC Issue 7. However, if the Commission were to determine that the only issue it can decide under GTC Issue 7 is whether AT&T or SBC should be responsible for the costs of any records work in connection with changing company code identifiers in the event of a merger, acquisition or similar transaction involving AT&T and another CLEC, the Commission should conclude that SBC should be responsible for any such costs. As noted above, SBC is already compensated for its record-keeping costs through the recurring and non-recurring charges SBC imposes when AT&T submits a local service order (in which process the applicable ordering and billing codes are provided). The payments SBC Illinois receives from AT&T should adequately compensate SBC Illinois for its services in processing and maintaining customer account records. Any costs that SBC Illinois incurs to revise its records as a result of a merger, acquisition or similar transaction involving AT&T and another CLEC are properly regarded as normal incidents of doing business for which SBC, as the service provider, should not be allowed to impose additional charges. (AT&T Ex. 1.0, p. 19) To effectuate this conclusion, the Commission would adopt the parties' agreed language for Section 1.47.1 of the Agreement but reject the additional sentence that SBC proposed, but AT&T disputed, for that Section.

B. INTERCONNECTION ISSUES

Interconnection Issue 1: Where SBC elects to subtend another LEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?

AT&T agrees generally with the PO's conclusion on Interconnection Issue 1 but proposed, in its BOE, that an additional sentence be added to Section 3.2.5.1 of the Agreement, as follows:

> Each party shall be responsible for the costs of transporting its originating traffic from the POI to the terminating switch of the other Party, including any third party transit charges, and the Parties shall compensate each other for the transport and termination of their respective originating traffic in accordance with Article 21 of this Agreement.

The purpose of AT&T's additional sentence is to make it clear that in the circumstances presented by Interconnection Issue 1 (i.e., indirect interconnection via a third-party ILEC's tandem switch), AT&T will be responsible for the cost of delivering its originating traffic over the third-party's transit facilities to the third-party carrier's POI with SBC (which will be located within SBC's serving area), and for the cost of transport and termination beyond that POI to the SBC terminating switch; and SBC will be responsible for the transport and termination of its originating traffic from the POI with the third-party carrier to the AT&T terminating switch. (See AT&T BOE, pp. 12-14)

Staff, while also generally agreeing with the PO's conclusion for Interconnection Issue 1, also proposes some additional language for Section 3.2.5.1, addressed to the same concern raised in AT&T's BOE. (Staff BOE, pp. 2-4) With all due respect, however, the two sentences that

Staff proposes to add to the end of Section 3.2.5.1 do not clarify the issue but rather add uncertainty.[2] AT&T's proposed language is more explicit, and therefore superior.

Staff's proposed language is confusing in its reference to delivering SBC's traffic at "AT&T's switch or such other mutually agreeable POI(s) . . . [which] must be within the LATA and within Ameritech Illinois' operating territory where the traffic originates." (Staff BOE, p. 4) In the context of Interconnection Issue 1, the location of the POI and the location of AT&T's terminating switch are two separate issues. The parties (including AT&T) are agreed that even where AT&T interconnects via a third-party ILEC's tandem, AT&T must establish a POI within SBC's operating territory. This is provided for by the ICA language adopted by the PO (and is not altered by AT&T's proposed additional language). However, the whole point of indirect interconnection via a third-party ILEC's tandem switch (which, it must be remembered, SBC Illinois has already elected to subtend) is that AT&T's switch may be located outside the SBC operating territory. Further, if Staff is suggesting that AT&T should be responsible for the cost of transporting SBC's originating traffic from the POI to the AT&T switch, this suggestion would be inconsistent with the "calling party's network pays" regime, and must be rejected. (See AT&T Init. Br., pp. 29-30) The FCC's regulations, 47 C.F.R. 51.703(b), clearly provide that "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."

In resolving Interconnection Issue 1, the Commission should keep in mind that the indirect interconnection contemplated under Interconnection Issue 1 can only occur in those situations in which SBC has elected to subtend another ILEC's tandem switch. At present there

[2]AT&T does not object to Staff's proposed addition of the phrase "and deliver its originating traffic to SBC-Illinois at this POI" to the end of the second sentence of Section 3.2.5.1. AT&T's responsibility to deliver its originating traffic to the POI established within SBC's serving area is consistent with the "calling party's network pays" regime.

are only four such arrangements in Illinois (and SBC would have complete control over whether any additional arrangements of this type are ever established). Presumably, in entering into such arrangements with the third-party ILEC in the first place, SBC determined that subtending the third-party ILEC's tandem switch represented the most efficient arrangement available to SBC. (See AT&T Rep. Br., pp. 14-15; AT&T BOE, p. 13) Further, as AT&T has made clear, SBC would not be required to deliver its originating traffic to AT&T using the third-party ILEC's transport facilities; rather, if it deems it more cost-effective or otherwise appropriate (e.g., because of the volume of originating traffic it is delivering to AT&T), SBC can elect to order separate direct trunking from AT&T to transport SBC's originating traffic to the AT&T switch. (AT&T Rep. Br., p. 15; AT&T BOE, p. 14)

In summary, the Commission should adopt the PO's conclusion for Interconnection Issue 1 including the PO's language for Section 3.2.5.1 of the Agreement, except that the additional sentence for Section 3.2.5.1 proposed in AT&T's BOE should also be adopted.[3]

Interconnection Issue 2: Does AT&T have the right to use UNEs for the purpose of network interconnection on AT&T's side of the POI?

SBC Illinois continues to attempt to have the Commission resolve this issue in accordance with what SBC expects the FCC's Triennial Review Order to say on the topic underlying Interconnection Issue 2. SBC has apparently abandoned its attempt (which the PO rejected, see PO, p. 23) to have this issue resolved based on statements made by the FCC in its February 20, 2003 press release describing the not-yet-issued Triennial Review Order. However, SBC nonetheless urges the inclusion of language in the PO specifying that if the Triennial Review Order is issued prior to the date of the final arbitration decision herein, and if the

[3]As noted above, AT&T does not object to Staff's proposed addition of the phrase "and deliver its originating traffic to SBC-Illinois at this POI" at the end of the second sentence of Section 3.2.5.1.

Triennial Review Order redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers, then AT&T's proposed ICA language should be rejected and SBC's position should be adopted. (SBC BOE, pp. 7-8 and Attach. A, p. ii).

SBC's proposed language for the final arbitration decision should be rejected. SBC's proposal is in conflict with SBC's own proposed resolution for GTC Issue 1A/SBC Issue 1 (which the PO adopted, see PO, p. 5), under which the Agreement would specify that February 19, 2003, is the effective date of the Agreement for purposes of operation of its "change in applicable law" provisions. That date was selected by SBC because it was the day prior to the FCC's issuance of its press release describing the Triennial Review Order. (See AT&T BOE, p. 2) Under SBC's proposal (which, again, the PO adopted), the Agreement would not be deemed to incorporate or reflect any aspect of the Triennial Review Order, and SBC could invoke the Agreement's change of law provision to negotiate amendments to the Agreement that SBC believes to be necessitated by the Triennial Review Order, when it is finally issued.[4]

Further, SBC's proposed language for Interconnection Issue 2 is also in conflict with AT&T's proposed resolution of, and ICA language for, GTC Issue 1a/SBC Issue 1, under which Section 1.3.0 of the Agreement would expressly recognize that the Triennial Review Order was not taken into account in negotiating and arbitrating this Agreement. (See AT&T BOE, pp. 2-6) Thus, SBC's rights to assert a change of law with respect to the subject matter of Interconnection Issue 2, should the Triennial Review Order turn out the way SBC expects it to, are fully

[4]AT&T assumes that SBC is not conceding, by its proposal that the PO's conclusion on Interconnection Issue 2 expressly recognize that this portion of the Agreement may be impacted by the Triennial Review Order, that this will be the only portion of the Agreement impacted by the Triennial Review Order.

protected under both SBC's (and the PO's) resolution and AT&T's proposed resolution of GTC Issue 1a/SBC Issue 1.

More generally, SBC's proposed language for the PO should be rejected because it would have the final arbitration decision mandate a revision to the Agreement based on a presumed outcome of the Triennial Review Order without the Triennial Review Order having been seen. At this point, with all evidence and briefing in this arbitration completed and the Triennial Review Order not yet issued, any amendments to the Agreement that either party believes are necessary due to the Triennial Review Order (when it is finally issued) should be negotiated through the process established by the general change in applicable law provisions of the Agreement.

In summary, the Commission should reject SBC's exception to the PO's conclusion for Interconnection Issue 2, and should adopt the PO's conclusion on this issue.

Interconnection Issue 5

> **AT&T Issue: Does AT&T have the right to establish a POI at any technically feasible point on SBC's network and does each originating party have the obligation to transport its traffic to the POI or should the agreement provide certain exemptions from the Act that relieve SBC from its obligation to interconnect at any technically feasible point and to transport its traffic from its originating switch to the POI?**
>
> **SBC Issue: Are there reasonable limitations on AT&T's right to interconnection with SBC Illinois free of charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9?**

Interconnection Issue 6

> **SBC Issue: In one-way trunking architectures, does Ameritech Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by Ameritech Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?**

Interconnection Issue 7

> **SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by Ameritech Illinois?**

Interconnection Issue 8

> **SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by Ameritech Illinois?**

SBC Illinois, in its BOE, advocates yet another iteration (which SBC first proposed in its Reply Brief) of its ongoing attempts to avoid its obligation to bear the costs of transporting its originating local traffic to the CLEC's terminating switch – a circumstance that arises solely because AT&T, as it is entitled, has put in place a network architecture that differs from SBC's legacy network architecture. (SBC BOE, pp. 8-10) SBC's eleventh-hour proposal suffers from the same fundamental flaws as its prior attempts to achieve the same result, which were rejected by Staff and by the PO. SBC's latest attempt should also be rejected.[5]

Staff, in its BOE, also offers a new proposal – even though the PO **adopted Staff's original position, in which AT&T had acquiesced.** (Staff BOE, pp. 4-7) Staff has, remarkably, **taken exception to the PO's adoption of Staff's own proposal** – a rather unheard of turn of events. In addition to being procedurally problematic for that reason, Staff's proposal also raises factual issues which cannot be addressed at this point in the proceeding, and also, ultimately, would enable SBC to avoid in part its responsibility for the costs of transporting its originating local traffic to the CLEC's terminating switch. Staff's new proposal simply comes too late in the proceeding to be given consideration, and is flawed in any event. The

[5]SBC's exception is stated to be to the PO's conclusion on Issues 6, 7 and 8. Staff's exception (and new proposal) is said to be to the PO's conclusion on Issues 5, 6, 7 and 8.

Commission should reject Staff's new proposal as well as SBC's latest variation of its proposal, and should adopt the PO's conclusion on Interconnection Issues 5 through 8 (which, as noted above, is Staff's **original** proposal).

SBC's latest proposal is no different in kind from its previous, flawed proposals. SBC originally proposed that AT&T would be required to compensate SBC for all transport of SBC's originating traffic in excess of 15 miles, regardless of the location of the POI or the AT&T terminating switch within the LATA. In an attempt to make this onerous proposal more palatable, SBC subsequently modified this proposal to specify that SBC would not bill AT&T for all of the otherwise-applicable costs. (See "SBC's Position" on Interconnection Issues 6 and 7 at pages 29-30 of the PO.) SBC's latest proposal is that unless an SBC-originated call is routed to and terminated at the AT&T switch that is geographically-closest to the SBC exchange where the call originated, AT&T would be required to pay SBC for transporting the SBC-originated call any distance beyond the distance to the closest AT&T switch.[6] (See SBC BOE, p. 10) However, as Staff notes: (1) "This alternate SBC proposal would, when SBC transports traffic to an AT&T switch other than the closest AT&T switch, cause AT&T to bear costs on SBC's side of the POI in contradiction to previous Commission Orders"; and (2) SBC's proposals in this proceeding would "penalize AT&T for electing a network architecture differing from SBCs." (Staff BOE, p. 5) Staff concurred with the PO that SBC's latest proposal "is not well developed", and does not in fact address the concerns raised by SBC's witness in this case. (Id., pp. 4-5; PO, p. 31)

[6]AT&T demonstrated that SBC's original proposal would shift millions of dollars in costs annually to AT&T. (See AT&T Init. Br., p. 52) SBC's latest proposal may or may not be more onerous financially for AT&T than SBC's original "over 15 miles" proposal. In some cases the AT&T switch nearest to the SBC exchange where the call originated may be within 15 miles, and in other cases it may be farther away than 15 miles.

SBC argues that the prior decisions referred to by Staff are not applicable to the dispute underlying Interconnection Issues 6-8 because these issues do not involve the placement of the POI. (SBC BOE, p. 9) SBC is wrong. As AT&T demonstrated at length in its previous briefs, SBC's proposals in this case are contrary to Sections 251(b)(5) and 252(d)(2) of the Telecommunications Act (47 U.S.C. 251(b)(5), 252(d)(2)) and the FCC's Rules at 47 C.F.R. 51.701 and 51.703, which require SBC to pay reciprocal compensation to AT&T for the transport of SBC's originating traffic irrespective of the location of the POI between SBC and AT&T or of AT&T's terminating switch. (See, e.g., AT&T Init. Br., pp. 42-52, 54-55) Section 251(b)(5) requires that carriers establish reciprocal compensation arrangements, and Section 252(d)(2) states that such arrangements "shall provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Moreover, 47 C.F.R. 51.703(b) plainly states, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." SBC's latest proposal, like its earlier variations, would violate these provisions. Additionally, as the Commission recognized in its Order in Docket 01-0614:

> Under Federal law, an originating carrier may not charge another telecommunications carrier for local traffic carried to another LEC's system (47 USC 51.703(b)).[7]
>
> . . . until such time as the rules change, however, each party to an interconnection agreement regardless of the number of POIs involved, shall bear the cost of getting traffic to the arrangement and shall not charge the other party on the other side any of the costs.[8]

[7]Illinois Bell Telephone Company, *Filing to implement tariff provisions relating to Section 13-801 of the Public Utilities Act*, Docket 01-0614 (June 11, 2002), par. 333.

[8]Id., par. 336.

Further, even SBC's characterization that its proposal does not involve placement of the POI is wrong. It must be remembered that the underlying objective of SBC's proposals on Interconnection Issues 5-8 is to avoid having to pay for transporting SBC-originated local calls outside of SBC Illinois' legacy local calling areas.[9] (See AT&T Init. Br., pp. 51-52) AT&T has the right to establish a single POI with the ILEC (SBC Illinois) within the LATA; and SBC is responsible for the costs of transporting its originating traffic to the POI (wherever located within the LATA) and thence to AT&T's terminating switch.[10] The effect of SBC's proposal would be, in effect, to force AT&T to establish multiple POIs within each LATA, at the AT&T switch that happens to be located closest to each SBC local exchange.[11] Even worse, it would effectively mandate the locations of AT&T's "terminating" switches.

In summary, the PO correctly rejected SBC's proposals for Interconnection Issues 6-8.

Staff's new proposal, propounded for the first time in its BOE, ultimately suffers from the same substantive flaws as SBC's proposals, because it would result in SBC being enabled to shift

[9]AT&T's Initial Brief, pp. 43-47 and 51-52, contains an extensive discussion of the differences between SBC Illinois' legacy network architecture and AT&T's network architecture, and explains how SBC's proposals on Interconnection Issues 5-8 would result in AT&T losing the benefits of its efficient network architecture and incurring substantially higher network costs, and would shift to AT&T a part of the transport costs that the ILEC (SBC) is required to bear under the Telecommunications Act.

[10]Section 251(c)(2) of the Telecommunications Act and the FCC's Rules at 47 C.F.R. 51.305(a)(2) give a CLEC the right to interconnect with the ILEC at any technically feasible point within the LATA. Further, it is the CLEC, not the ILEC, that is entitled to designate the POI. See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets 96-98 and 95-185, FCC 96-325, First Report and Order (rel. Aug. 8, 1996), par. 220, 549 ("*Local Competition Order*").

[11]SBC's argument that its proposal is justified because "Section 51.703(b) does not prevent LECs from charging carriers for facilities used in wide area calling or 'other similar services'" (SBC BOE, p. 9) is just a variation on SBC's discredited "expensive interconnection" argument. (See PO, pp. 30-31) In any event, there is no evidence that what is involved here is "wide area calling" or a "similar service."

a portion of the cost of transporting its own originating local traffic to AT&T, and would in effect allow SBC to designate the AT&T switch closest to each SBC local exchange as a POI. Staff's proposal is also fundamentally one-sided, and inconsistent with federal requirements, because it fails to recognize that the obligations of ILECs and CLECs to compensate each other for transport and termination of their respective originating local traffic are *reciprocal* obligations. Under Staff's proposal, SBC would not have to bear responsibility for transporting its originating local traffic beyond the closest AT&T switch to the originating local exchange, but AT&T would not be given the same right to shift to SBC the costs of transporting AT&T's originating local traffic beyond the closest SBC switch to the point of origination of the call.

Staff (and SBC's) proposals would penalize AT&T by allowing SBC to assess transport fees to AT&T on calls originated by SBC when AT&T has deployed additional switches. The unavoidable and bizarre outcome of these proposals is to penalize AT&T's investment in additional switches by using it as a basis to eliminate major portions of SBC's financial responsibility for transporting its customers' originating traffic, and transferring that responsibility to AT&T (just as AT&T begins to succeed in the marketplace via facilities-based competition). This nonsensical outcome results from a fundamental flaw in the logic underlying these proposals - namely, that the ILEC's responsibility to carry and terminate its originating traffic ends at the nearest point in AT&T's network. This logic ignores the fundamental, reciprocal obligation of any carrier to be responsible to get its originating traffic to the terminating switch.

However, in addition to substantive reasons, there are procedural reasons why the Commission should reject the proposal advanced by Staff for the first time in its BOE. Staff witness Dr. Zolnierek provided an extensive discussion of the issues involved in Interconnection

Issues 5-8, including the relevant FCC and Commission precedents, in his prepared testimony. (Staff Ex. 1.0, pp. 30-47) Although agreeing in essence with AT&T's position on these issues, Dr. Zolnierek did not recommend adoption of either AT&T's proposed ICA language or SBC's proposed ICA language relating to these issues. Rather, he proposed that the Commission (1) reject SBC's proposed Sections 4.3.2.1, 4.3.3, 4.3.3.1 and 4.3.3.2, and (2) adopt SBC's proposed language for Sections 4.3.1 and 4.3.2, but with the references in those sections to proposed Sections 4.3.2.1, 4.3.3, 4.3.3.1 and 4.3.3.2 deleted. Staff advocated adoption of Dr. Zolnierek's recommendation in its Initial Brief. (Staff Init. Br., pp. 37-45) **And that is exactly what the PO did.** (See PO, pp. 27-28, 31, 33) **Thus, Staff has taken exception to the PO's adoption of Staff's own proposal.**

Further, to give consideration to Staff's new proposal would be fundamentally unfair to AT&T. Although Staff (Dr. Zolnierek) did not accept AT&T's proposed contract language for Interconnection Issues 5, 6 and 7, and AT&T had a right to file testimony in response to Staff's (Dr. Zolnierek's) position and recommendations, AT&T elected to accept Staff's (Dr. Zolnierek's) proposal with respect to these Interconnection Issues. Similarly, in its briefs, AT&T accepted Staff's recommendation on these issues. (See "AT&T Position" on Interconnection Issues 5, 6, 7 and 8 at pp. 26, 29 and 32 of the PO.) Had Staff presented in testimony the proposal it has presented in its BOE, AT&T would have had the opportunity to respond to and contest that proposal in both responsive testimony and briefs. The "further opportunity to respond to Staff's proposal" (Staff BOE, p. 6), i.e., to respond in the Brief in Reply to Exceptions, is woefully inadequate.

This is particularly the case because an adequate response to Staff's proposal would necessitate presenting significant factual information which cannot be done at this stage of the

case. Such factual information would include a detailed discussion of the nature of AT&T's switches and why some of them may be inadequate or inappropriate for accepting all traffic originating at the closest SBC local exchange, further discussion of the bases for AT&T's network architecture and the differences between AT&T's network architecture and SBC's network architecture, why AT&T has placed its switches where it has, and other factual matters. Further, while AT&T recognizes that Staff's proposal would give AT&T the opportunity to demonstrate that the "nearest switch" cannot as a result of "technological infeasibility" receive SBC's traffic (see Staff BOE, p. 7), leaving such determinations to implementation under the Agreement, once it goes into effect, is a fundamentally bad idea. It is a prescription for constant and ongoing disputes between the parties. Finally, Staff's proposal that AT&T must bear the burden of proof on these determinations stands the requirements of the Telecommunications Act, FCC Rules and FCC and Commission precedent – namely, that it is the CLEC, not the ILEC, that is entitled to designate the POI and that is entitled to implement its own network architecture to achieve efficiencies – on their head.

In summary, the Commission should reject both SBC's and Staff's exceptions and proposals on Interconnection Issues 5 though 8, and should adopt the PO's conclusions for Interconnection Issues 5 through 8.[12]

[12] AT&T does not object to Staff's exception requesting that the summary of "Staff's Position" at page 33 of the PO summarize the position taken by Staff in testimony and briefs on Interconnection Issue 8, rather than stating, incorrectly, that "Staff took no position on this issue." (Staff BOE, p. 7) Staff in fact took a position on Interconnection Issue 8, and Staff's proposed language accurately summarizes it.

C. UNE ISSUES

UNE Issue 1: Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?

While AT&T does not agree with it, AT&T certainly agrees that Staff's Position on UNE Issue 1 should be included in the summaries of parties' positions.

UNE Issue 2: Should the ICA definition of telecommunications service be as stated in the Public Utilities Act, or in the FCC Act?

SBC takes exception to the Proposed Order's conclusion on UNE Issue 2 and, in so doing, offers up revised language for Commission consideration for Section 9.1.1. (SBC BOE, p. 12) SBC's proposed modified language should be rejected for several reasons. First, SBC's proposed language refers specifically to the definition of "telecommunications service" contained in the federal Telecommunications Act, despite the fact that the PO has already appropriately *rejected* SBC's proposal to limit the definition to that in the federal Act in favor of conforming the definition to that contained in the Illinois Public Utilities Act ("PUA").

Second, SBC contends that to the extent the definition of "telecommunications service" in Section 13-203 of the Illinois PUA creates obligations that exceed its federal obligations as imposed by the federal Act, such obligations are inconsistent with the federal Act. (SBC BOE, p. 11) SBC's argument is fatally flawed and is just one example of the overarching SBC "inconsistency" theory AT&T forewarned the Commission SBC would engage in. As AT&T noted at page 78 of its Initial Brief, SBC inappropriately uses the phrase "inconsistent" and "different" synonymously:

> A recurring theme throughout SBC Illinois's testimony is that the state obligations imposed upon it by the Illinois General Assembly and the Illinois Commerce Commission are "inconsistent" with the unbundling and combining obligations imposed upon it by the federal Act and the FCC's rules and orders. According to SBC, however, a state obligation is "inconsistent" with federal law

> if it is "different" in any respect from the federal obligation. This would include, of course, state obligations that are broader than the federal obligations. AT&T is of the view that a state obligation is consistent with a federal obligation to the extent SBC can comply with both its state and federal obligations; that is, so long as compliance with a state obligation does not cause SBC to violate a federal obligation, the state obligation is consistent with state law. SBC's obligations to unbundle and combine "network elements" pursuant to Section 13-801 of the Illinois Public Utilities Act are consistent with federal law because SBC can comply with its state law obligations without violating its federal unbundling requirements.

Assume, for purposes of illustration, that federal law were to require SBC to provide AT&T with access to UNEs to provide a particular telecommunications service only to the public, and that state law required SBC to provide AT&T with access to UNEs to provide that same telecommunications service to the public and to AT&T's affiliates. SBC would contend in that case that because the state obligation is broader than its federal obligation, the state law obligation is inconsistent with federal law, and as a result SBC could not be required by this Commission to provide AT&T with access to UNEs other than to provide a telecommunications service to the public. That is not the case, however. SBC's interpretation ignores the federal Act's savings clauses allowing states to impose additional, albeit consistent, obligations and would render the savings provisions of the federal Act meaningless. See, e.g., Section 251(d)(3) and Section 261(c) of the federal Telecommunications Act, allowing states to impose additional obligations that are consistent with the federal Act.

In the above example, federal law and state law are not inconsistent because SBC can satisfy its federal law obligations by providing AT&T with UNEs to offer that service to the public and, at the same time, can satisfy its state law obligations by providing AT&T with UNEs to offer that service to the public and to AT&T's affiliates. Only if SBC could not comply with a state law requirement without violating a federal requirement or prohibition would the two obligations be inconsistent. For example, if state law were to require that SBC provide AT&T

with the UNEs necessary to offer telecommunications services A, B, and C but federal law expressly prohibited SBC from providing AT&T with the UNEs for purposes of offering service C, there would be a conflict and SBC would be unable to comply with its state law obligation without also violating the federal law prohibition.

Thus, SBC's contention that any state obligations that exceed the obligations imposed on it by the federal Act are, *per se*, inconsistent with the federal obligations is just plain wrong. Assuredly, however, if SBC's proposed language appearing at page 12 of its BOE is adopted, SBC will deny as "inconsistent" with federal law any AT&T request to purchase UNEs to provide a "telecommunications service" that falls within the state definition of "telecommunications service" but does not also fall within the definition of "telecommunications service" as defined by the federal Act. That result would effectively nullify Section 13-801(a) of the PUA, which provides, in pertinent part:

> An incumbent local exchange carrier shall provide a requesting telecommunications carrier with interconnection, collocation, network elements, and access to operations support systems on just, reasonable, and nondiscriminatory rates, terms, and conditions ***to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access***. The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements ***in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings.*** (220 ILCS 5/13-801(a) (emphasis supplied))

Similarly, the definition of "telecommunications service" contained in Section 13-203 of the PUA does not limit a "telecommunications service" to only those services provided to the public. "Telecommunications service" is defined in Section 13-203 of the PUA as:

> the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such

> information) used to provide such transmission and includes access and interconnection arrangements and services.

To interpret the definition of "telecommunications service" more narrowly than the Illinois PUA defines it would therefore violate numerous provisions of the PUA and, as AT&T discussed in its Initial Brief, would also violate the Commission's Orders in Dockets 98-0396 and 01-0614. (AT&T Init. Br., pp. 76-78) The Commission cannot and should not relieve SBC of its statutorily-mandated state law obligations and should not deprive AT&T of the benefits to which it is entitled as a matter of Illinois law.

SBC is also wrong that its revised proposal will "avoid the potential for any future dispute." (SBC BOE, p. 12) To the contrary, SBC's revised language would only tend to foster disputes. Again, and as SBC makes very clear in its BOE, in its view any state obligation that exceeds its federal obligation is inconsistent with its federal obligation. (See SBC BOE, p. 11) If its language were adopted, SBC could resist at any time AT&T might seek to enforce state law-based rights over and above federal requirements, and it would invoke the language from the Agreement in support. In short, SBC's most recent proposed language will encourage rather than avoid future disputes and should be rejected outright. The Proposed Order's conclusions for UNE Issue 2 should remain intact.

UNE Issue 4: May AT&T use UNEs to provide service to itself and its affiliates?

SBC takes exception to the Proposed Order's conclusions on UNE Issue 4, contending that state law does not allow CLECs to use UNEs or UNE combinations to provide services to themselves or their affiliates.

SBC first reiterates its argument that because the federal definition of "telecommunications service" encompasses only those services offered directly to the public, SBC cannot be required to provide AT&T with network elements that enable AT&T to offer

telecommunications services to itself and its affiliates because to do so would be inconsistent with federal law. (SBC BOE, pp. 13-14) As discussed above in conjunction with UNE Issue 2, SBC's argument must be rejected.

While not wanting to belabor the point, AT&T reiterates that Section 13-801(a) of the Illinois PUA expressly provides that SBC shall provide network elements ***"in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings"*** and that AT&T may use network elements provided to it by SBC to provide ***"any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access***. Thus, the Illinois PUA expressly allows AT&T to use network elements to the fullest extent possible to provide any and all existing and new telecommunications services. Certainly, the General Assembly did not intend, as SBC contends, that this language limits AT&T's ability to use network elements to provide services to end users only, and not to itself and its affiliates.

In fact, the language of the statute itself supports AT&T's right to use network elements to provide services to itself and its affiliates. Specifically, the statute expressly provides that AT&T may use SBC-provided network elements to provide exchange access service. Exchange access service is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of toll services." (See Section 3(16) of the Telecommunications Act, 47 U.S.C. 153) Exchange access service in this context is provided not to end users but to telecommunications carriers. As such, the very language of Section 13-801, which expressly references a carrier-to-carrier service, dispels any notion that AT&T may only use network elements to provide telecommunications services to end users, as SBC contends.

In addition, Section 13-801(a) provides that AT&T can use network elements to provide any and all new and existing telecommunications services. It does not state that AT&T may only use network elements to provide "retail telecommunications services," which is defined as "a telecommunications service sold to an end user." (See Section 13-220 of the Illinois PUA.) Certainly if Section 13-801 were intended to limit AT&T's ability to use network elements to only those services provided to end users, the word "retail" would have been inserted in front of "telecommunications service." It was not.

SBC also erroneously contends that the Commission's Order in Docket 01-0614 did not conclude as a general proposition that a CLEC may use UNEs to provide service to itself or its affiliates.[13] (SBC BOE, p. 14) While this issue may have arisen in the context of reselling the intraLATA toll portion of the UNE-Platform to interexchange carriers, SBC is wrong that the Commission's conclusion is limited to that one instance. In fact, the entire purpose of Docket 01-0614 was to implement Section 13-801 of the Illinois PUA. Section 13-801 does not single out for special treatment a CLEC's ability to resell intraLATA toll to an interexchange carrier. Rather, the Commission's conclusion was based on its interpretation of Section 13-801 as a whole and, as noted above, the broad unbundling rights and obligations it imposes. This very point is corroborated by a sentence in the same paragraph of the Docket 01-0614 Order that SBC cites in support of its argument (par. 454): "Further, given our prior conclusion that the legislature intended its action to fundamentally change the telecommunications landscape in Illinois, we are unwilling to read such a limitation [the limitation that SBC must provide the intraLATA toll portion to the interexchange carrier] into the Act." This broad language is in

[13] While SBC frames this issue as the ability to resell services, the real issue is whether AT&T can use network elements to provide services not only to end users, but to itself and its affiliates.

direct conflict with the very narrow, limited interpretation SBC attempts to bestow on the Commission's conclusion.

Finally, SBC's reference to paragraph 608 of that same Order is inapposite. (SBC BOE, p. 14) The conclusions reached in paragraph 608 are, as the Order itself indicates in that paragraph, limited to Section 13-801(d)(4). The very language of paragraph 608 is, as it states, "self-limiting to instances where the requesting carrier uses the platform to provide services to end users and pay telephone providers, which Section 13-801(d)(3) is not." In fact, the only reference to "end users or payphone service providers" is in Section 13-801(d)(4). None of the other sections are, as the Commission recognized, so self-limiting.

Accordingly, the Proposed Order's conclusions on UNE Issue 4 should remain intact.

UNE Issue 9(a): May AT&T combine UNEs with other services (including access services) obtained from SBC?

SBC takes exception to the Proposed Order's conclusion on UNE Issue 9(a) because, according to SBC, it may result in AT&T being allowed to "combine UNEs in a manner that would circumvent the prohibition on commingling (i.e., the combining of loops or loop/transfer combinations with access services) adopted by the FCC in its *Supplemental Order Clarification* in CC Docket No. 96-98."[14] (SBC BOE, pp. 16-17)

SBC's exception is both misleading and disingenuous. SBC's concern that the language the PO adopts will lead to confusion about whether AT&T can violate the FCC's *Supplemental Order Clarification* is completely unfounded. In fact, the language adopted by the PO makes it clear that AT&T can "combine any Unbundled Network Element(s) with other services (including access services) obtained from SBC Illinois in order to provide telecommunication

[14]The *Supplemental Order Clarification* is *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 00-0183 (rel. June 2, 2000).

services to AT&T, its end users and affiliates ***as long as these combinations are consistent with FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-0183."*** (emphasis supplied). How much more clear would SBC like this language to be? For SBC to allege that this language could be interpreted as not requiring AT&T to comply with the FCC's *Supplemental Order Clarification* is ludicrous, and SBC's proposed revisions should be rejected. No such clarification is required. The language is quite clear in that regard and should be left alone.

SBC's real motivation, of course, is to use "confusion" regarding AT&T's compliance with the *Supplemental Order Clarification* as a guise to deprive AT&T of its clear and unequivocal right to combine network elements with any and all other services, including access services, in ways that do not violate the UNE/access commingling prohibitions of the FCC's *Supplemental Order Clarification.* Put simply, in order to ensure that AT&T does not combine UNEs and access services in ways that would violate the FCC's *Supplemental Order Clarification,* SBC's proposed revisions would eliminate AT&T's right to combine UNEs with ***any*** other service provided by SBC, whether or not the service is an access service. It would also unlawfully deprive AT&T of its right to combine UNEs and SBC-provided access services in ways that do not violate the FCC's *Supplemental Order Clarification.* SBC's language is not only unlawful, but is akin to destroying the whole lawn to eliminate a single weed.

As discussed above, AT&T has the right to use network elements to the fullest extent possible to provide any and all new and existing telecommunications service, subject, of course, to any limitations the Commission imposes on that right, such as those contained in the FCC's *Supplemental Order Clarification.* This includes AT&T's right to combine network elements with other services provided by SBC to offer any and all telecommunications services. The

language adopted by the PO preserves that right, while SBC's language unlawfully and unreasonably deprives AT&T of that right. Both AT&T and Staff agree with the language adopted by the PO and the PO should mandate that it be included as Section 9.3.2.5 of the parties' agreement.

SBC's further proposed revision eliminating AT&T's right to provide telecommunications services to itself and its affiliates should also be rejected, as discussed in conjunction with UNE Issue 4 above.

UNE Issue 10:

SBC Issue: Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in Verizon Comm. Inc.?

AT&T Issue: Is SBC obligated to combine requested network elements for AT&T?

As AT&T and Staff have convincingly demonstrated in their Briefs on Exception (as well as in their post-hearing briefs), the Proposed Order erroneously concludes that certain language from the *Verizon* decision should be included in the parties' interconnection agreement.[15] AT&T agrees with Staff that incorporation of the *Verizon* language is inappropriate and, at best, unnecessary. (Staff BOE, p. 10) As AT&T and Staff explained, the *Verizon* decision did not, as SBC contends, impose any additional limitations or restrictions on SBC's obligation to combine UNEs for CLECs. (Staff BOE, pp. 10-11) As Staff correctly points out, the issue of limitations on an ILEC's obligations to combine was not an issue before the Supreme Court in *Verizon*; rather, the issue before the Supreme Court – and the only one it decided regarding combinations – was whether the combination rules promulgated by the FCC (47 C.F.R. 51.315(c)-(f)) were appropriate under the Telecommunications Act. (Staff BOE, p. 10)

[15] Verizon Comm. Inc. v. FCC, 535 U.S. 467 (2002).

Whether the Supreme Court's statements constitute *dicta* or whether they constitute support for upholding FCC Rules 315(c) through (f), the ultimate result – a result even SBC acknowledges – is that the Supreme Court did not invalidate or vacate those rules for failure to include restrictions or limitations such as SBC now proposes for inclusion in this Agreement. Instead, the Supreme Court reinstated Rule 315(c) through (f), as promulgated and implemented by the FCC. In doing so, as Staff points out, the Supreme Court merely acknowledged the FCC's rationale for adopting those rules in the first place and agreed with it, including the appropriateness of requiring the ILEC to combine network elements if it is less costly and more efficient for the ILEC (SBC) to do so. (See Staff BOE, pp. 11-13) If, in fact, the Supreme Court's *Verizon* decision were intended to modify SBC's obligations in a manner different from the obligations imposed by the FCC in Rules 315(c) through (f), the Supreme Court would not have simply reinstated subsections (c) through (f) of FCC Rule 315. Rather, it would have vacated subsections (c) through (f) and remanded them back to the FCC to make the revisions deemed necessary by the Supreme Court. As such, AT&T strongly agrees with Staff that the Commission should reject SBC's proposal to include additional language from the *Verizon* decision in the parties' interconnection agreement.

AT&T also agrees with Staff that to the extent the PO's goal is to maintain the status quo with respect to SBC's current obligations to combine UNEs – which it must given the fact that nothing has changed those obligations – inclusion of SBC's Sections 9.3.3.9.5.1 and 9.3.3.5.2 would create inconsistency and confusion. (Staff BOE, pp. 14-15) Indeed, given the fact that the PO appropriately intends to preserve the status quo absent a change of law applicable to SBC's Illinois unbundling and combining obligations, AT&T contends that including any extraneous language – both those paragraphs that "reproduce" *Verizon* language and those

paragraphs that do not (e.g., the paragraphs mentioning a duty to combine if the CLEC is collocated, which is never mentioned in *Verizon)* – in the parties' interconnection agreement would cause confusion and ambiguity because such provisions directly conflict with the current controlling law in Illinois.

If, however, the Commission insists on including any language from the *Verizon* decision, that language ***must,*** as the PO does, make very clear that whatever guidance and/or direction SBC anticipates will be forthcoming on the impact of the *Verizon* decision – of course, AT&T and Staff contend that no such impact exists – impacts SBC's ***federal unbundling and combining obligations only.*** For the same reasons, the word "only" must be stricken from Section 9.3.3.9, as the PO correctly does, if AT&T's and Staff's exceptions are denied and this language is inserted at all.

In its Brief on Exceptions, SBC argues that the language "under federal law" inserted by the PO must be stricken and the word "only" reinserted because the so-called *Verizon* limitations would apply to SBC's state law obligations to provide combinations as well as to combinations SBC provides under federal law. SBC's rationale, not surprisingly, is that any state obligations that are not "subject to the *Verizon* limitations" are inconsistent with federal law and, therefore, unlawful. (SBC BOE, pp. 17-18) According to SBC, then, while it concedes that the impact, if any, of the *Verizon* decision has not been defined, SBC is sure that whatever guidance is ultimately provided, if any, will automatically preempt Illinois from imposing additional, pro-competitive unbundling and combining obligations on SBC in addition to those imposed by federal law. SBC therefore requests that the words "under federal law" be stricken and the word "only" be reinserted to make it clear that any and all of the additional unbundling and combining obligations imposed by the General Assembly in Section 13-801 and by the Commission in its

Orders in Dockets 01-0614 and 98-0396 are automatically preempted by as-yet-undefined *Verizon* "limitations."

SBC's arguments are nonsensical, illogical and unlawful. As AT&T explained in its Brief on Exceptions, the PO's decision to include the so-called *Verizon* restrictions in the parties' Agreement is inconsistent with the obligations placed on SBC by the federal Telecommunications Act of 1996 to provide UNE combinations to CLECs as construed by the FCC and the United States Supreme Court, and contrary to the unequivocal requirements of Illinois law. AT&T also warned that SBC might use this language to limit, evade or improperly encumber the provision of UNE combinations as part of its continuing campaign to do away with, or undermine the competitive feasibility of, the UNE Platform. And, finally, AT&T forewarned the Commission that SBC would argue that to the extent its state obligations go farther than or are broader than its federal obligations, the state obligations are, per se, *inconsistent* with its federal obligations.

Not surprisingly, SBC attempts to do all of those things in its exception to UNE Issue 10. As AT&T discussed above in its discussion of UNE Issue 2, however, it is simply not true that to the extent *Verizon* imposes limitations on SBC's unbundling and combining obligations (which AT&T and Staff vehemently contend it does not), any state law imposing unbundling and combining obligations that are broader than SBC's federal requirements are inconsistent with, and therefore preempted by, federal law. Indeed, SBC's proposal would render meaningless all of the federal Act's saving clauses permitting states to adopt unbundling and combining requirements that are broader than and not inconsistent with federal law. It would also render Section 13-801 merely duplicative of federal law at best and, at worst, a nullity because,

according to SBC, to the extent it imposes requirements beyond SBC's federal requirements, it is invalid.

An example will illustrate this point. Assume, for purposes of illustration only, that the *Verizon* decision is interpreted to require SBC to combine network elements for CLECs only in those circumstances where a CLEC does not have direct, nondiscriminatory access to SBC's Main Distribution Frame, or MDF. SBC's federal obligation, then, is to combine network elements where it does not permit access to its MDF. Assume, in addition, that Section 13-801 requires SBC to combine UNEs if SBC ordinarily combines UNEs for itself – as Section 13-801 does. Because Section 13-801 imposes combining obligations that are broader than federal law, SBC would contend that, according to *Verizon*, it is only required to combine UNEs when a CLEC is denied access to the MDF and that to the extent Section 13-801 requires it to do more, Section 13-801 is "inconsistent" with federal law and, therefore, unlawful.

In fact, the Section 13-801 obligations, while they are potentially broader than and "different" than the federal obligations, are ***not inconsistent*** with the federal obligations because SBC can legally comply with both its federal obligations and its state obligations at the same time. Specifically, by combining UNEs for CLECs without access to the MDF, SBC complies with its federal obligations. And by combining for CLECs those UNEs that it ordinarily combines, SBC complies with its state obligations and, in the course of doing so, does not violate any federal law. There simply is no inconsistency.

In short, there is certainly no record evidence or applicable law that requires the Commission to insert language into the parties' interconnection agreement that limits SBC's state law unbundling obligations to only those federal obligations SBC anticipates will ultimately be gleaned from the *Verizon* decision. Indeed, to do so would be directly inconsistent with the

very clear Illinois state law requiring combinations free of such limitations. As discussed in AT&T's post-hearing briefs and its BOE, the Commission has ordered SBC to provide CLECs with all network element combinations that it ordinarily combines for its own use or the use of its end user customers, including new UNE-P combinations used to serve new lines and additional, or second, lines. (See AT&T Init. Br., pp. 106-08) It did so under state as well as federal law. Id.

Moreover, the Illinois General Assembly in enacting Section 13-801(d) of the Illinois Public Utilities Act required SBC Illinois to provide "to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on *any unbundled or bundled basis,* as requested. . . ." (emphasis supplied) and to combine all network elements that it "ordinarily combines" for itself. Thus, to read into the parties' interconnection agreement the restrictions SBC proposes – and, in particular, its version of the "unable to combine" restriction – would be directly inconsistent with the requirements of Illinois law.

In sum, AT&T agrees wholeheartedly with Staff that the *Verizon* language has no place whatsoever in the parties' interconnection agreement for the numerous reasons discussed in the Briefs on Exception of Staff and AT&T. SBC Illinois' ostensible reliance on the *Verizon* decision is misplaced and, most importantly, AT&T's proposed version of Section 9.3.3 is *taken directly from FCC Rule 51.315(c).* As SBC, Staff and AT&T all agree, in *Verizon*, the United States Supreme Court upheld – indeed, reinstated – the FCC rules requiring incumbent LECs to make "additional" combinations for CLECs, including Rule 315(c). Accordingly, AT&T's proposed language, taken directly from Rule 315(c), should be adopted.

To the extent the Commission disagrees and includes *any Verizon* language in the parties' interconnection agreement, it must make clear that the language applies to and impacts SBC's federal obligations only. As such, SBC's exception should be denied and AT&T's exceptions should be granted.

UNE Issue 11(b): Is SBC required to combine UNEs with non-251(c)(3) offerings?

SBC's exceptions to the PO's conclusions create needless confusion. SBC does not agree with Staff's proposed language for Section 9.3.3.14 – which the PO adopts – but it takes the position that if the PO does adopt Staff's language, it should be renumbered as Section 9.3.3.14.3 and the PO should simply add Staff's proposed language after SBC's proposed Sections 9.3.3.13 and 9.3.3.14.2, which SBC contends the PO should adopt.

SBC's ramblings should be ignored. The PO adopted Staff's language and clearly states that the language should become Section 9.3.3.14 and not some other section in some other place. As AT&T noted in its Brief on Exceptions, however, the language adopted by the PO at pages 63-64 imposes obligations on SBC that are seemingly narrower than, and therefore potentially violate, the *minimum* federal obligations imposed upon SBC by the federal Telecommunications Act and the FCC. For example, Staff's proposed language tracks the federal rules for the most part, but limits SBC's combining obligation to those network elements "ordinarily combined" in SBC's network. The language of FCC Rule 315(c), however, extends SBC's combining obligations to even those elements that are not ordinarily combined in the incumbent LEC's network provided the combination is technically feasible and would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

AT&T's proposed language, on the other hand, is taken directly from the language of FCC Rule 315(c) and (d). (See 47 C.F.R. 51.315(c) and (d)) FCC Rules 315(c) and (d) provide:

> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
>
> (1) Technically feasible; and
>
> (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
>
> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

These obligations comprise, in part, SBC's minimum combining obligations under federal law. Accordingly, consistent with the applicable and controlling law, AT&T's proposed language should be adopted and the PO's final paragraph beginning on page 63 and carrying over onto page 64 should be revised as follows:

> We do not agree with SBC and we adopt AT&T's language, which tracks, *verbatim*, the language of FCC Rules 315(c) and 315(d) to resolve UNE Issue 11(b). ~~Staff's position which includes the appropriate FCC restrictions. The language for Section 9.3.3.14 should be as follows:~~
>
> ~~Upon AT&T's request, SBC Illinois shall perform the functions necessary to combine SBC network elements if those network elements are ordinarily combined in SBC Illinois' own network provided that such combinations are (1) technically feasible and (2) would not impair the ability of other telecommunications carriers to obtain access to network elements on an unbundled basis or to interconnect with SBC's network. In addition, upon a request of AT&T that is consistent with the above criteria, SBC shall perform the functions necessary to combine SBC's network elements with elements possessed by AT&T in a technically feasible manner to allow AT&T to provide telecommunications service~~.

UNE Issue 15:

> **SBC Issue: Under what circumstances is a CLEC able to combine for itself?**

AT&T Issue: Is SBC required to combine UNEs that are ordinarily combined?

In its Brief on Exceptions, AT&T took exception to UNE Issue 15 because while the PO correctly concluded in several places that SBC is obligated to combine network elements for AT&T regardless of whether AT&T is collocated, the PO appeared to have inadvertently adopted SBC's proposed Section 9.3.3.9.5.3, which allows for the possibility that AT&T may be required to combine for itself on UNE-P if it is collocated – the very same reason for which the PO specifically rejected SBC's proposed Section 9.3.2.2. Specifically, the PO rejected Section 9.3.2.2 (stating that "if AT&T is collocated, it must combine the elements for itself and SBC is not required to combine for AT&T") because it could be interpreted as requiring AT&T to combine the UNE-Platform itself in those central offices in which it is collocated:

> The language of 9.3.2.2 is not to be included. The language of AT&T is too broad ***and the language proposed by SBC could be seen as requiring AT&T to combine for itself on UNE-P.*** (PO, p. 74) (emphasis added)

Failure to reject SBC's proposed Section 9.3.3.9.5.3 would also be inconsistent with the language the PO adopts at page 54 in conjunction with UNE Issue 8:

> 9.3.1.2 – When AT&T requests a network elements platform referred to in Section 9.3.1 above without the need for field work outside of the central office, for an end user that has existing local exchange telecommunications service provided by SBC or by another CLEC through SBC's network elements platform, unless otherwise agreed to by AT&T, SBC shall provide AT&T with the requested network elements platforms with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC shall accomplish such migrations to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal. AT&T may order a UNE Platform using a single Local Service Request (LSR). ***It shall not be necessary for AT&T to collocate an SBC Illinois central office in order to purchase the UNE-Platform. SBC Illinois shall provide network elements platforms, including the UNE-Platform to AT&T even if AT&T is collocated in the relevant central offices***. If Unbundled Local Switching Shared Transport (ULS-ST) is used, SBC Illinois will be responsible for engineering provisioning and maintenance of these

components to ensure they support the agreed upon rate of service. (PO, p. 54) (emphasis added)

SBC's proposed Section 9.3.3.9.5.3 *must* also be rejected, of course, because it potentially requires the same thing, in direct contravention of this Commission's orders and SBC's own tariff. AT&T is quite sure this is what the PO intended given the fact that the law in Illinois is clear that SBC is required to provide AT&T with UNE-Platform migrations and new UNE-Platform combinations throughout SBC's service territory, regardless of whether AT&T also happens to be collocated in the central office in which SBC is providing the UNE-Platform. That was the conclusion reached by the Commission in its Orders in Docket 98-0396 and Docket 01-0614 and this conclusion is required by Section 13-801 of the Illinois Public Utilities Act.

If the PO's adoption of Section 9.3.3.9.5.3 was not inadvertent (as again, AT&T is confident that it must have been), Staff is absolutely right that the Supreme Court's *Verizon* decision does not require AT&T or any other CLEC to combine network elements for itself simply because it is collocated and regardless of whether (1) AT&T can do so as economically as SBC; (2) AT&T can do so as efficiently as SBC; or (3) AT&T has nondiscriminatory access to the UNEs (i.e., access to the MDF).[16] (Staff BOE, pp. 16-17)

[16]Put differently, even if it were the case that an ILEC need not combine elements if the CLEC can do so, the FCC categorically determined when it promulgated Rule 315(c) that, "given the[] practical difficulties of requiring requesting carriers to combine elements that are part of the incumbent's network, . . . section 251(c)(3) should be read to require incumbent LECs to combine elements requested by carriers." *Local Competition Order* par. 294. Indeed, as *Verizon* itself states (535 U.S. at 532), the FCC reaffirmed this finding in 1999, when it determined that incumbents uniformly denied entrants with the physical access to the incumbents' networks that would be required to combine elements. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, C. C. Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1990), par. 482 & n.973. In *Verizon*, the Supreme Court thus affirmed and reinstated the FCC combinations rules notwithstanding the absence of a condition limiting them to instances where CLECs are shown to be unable to perform the combinations. It did so on the ground that "[t]here is no dispute that the

SBC defends the inclusion of this paragraph by stating that "the Agreement should reflect the limitations on an ILEC's duty to combine UNEs that the Supreme Court recognized in *Verizon*" and, according to SBC, "[o]ne of those limitations is that the incumbent is not required to combine the UNEs unless the CLEC is able to make the combination itself." (SBC BOE, p. 26) SBC then makes the illogical, not to mention unlawful, leap that the collocation limitation in its proposed Section 9.3.3.9.5.3 is somehow supported by this alleged *Verizon* limitation. But the language proposed by SBC in Section 9.3.3.9.5.3 is simply not properly attributed to the *Verizon* decision. Nowhere does the *Verizon* decision even mention an ILEC's obligation to unbundle and/or combine network elements where a CLEC is physically collocated or has an on-site adjacent collocation. This provision is nothing more than an invention of SBC Illinois, and it must be rejected as unlawful and unreasonable.

In sum, nowhere in the *Verizon* decision did the Supreme Court even hint that a CLEC is able to combine UNEs itself simply because it is collocated. There is no support whatsoever for this position and AT&T is certain the Proposed Order, which otherwise appears intent on preserving the status quo in this respect, did not intend to adopt such egregious and unlawful language. In addition to being unlawful, as Staff notes, this language could potentially unnecessarily raise AT&T's costs and place AT&T at a competitive disadvantage, and would constitute "poor public policy and even worse economics." (Staff BOE, p. 16) Moreover, Staff is correct that inclusion of Section 9.3.3.9.5.3 is inconsistent with the PO's objective of preserving the status quo, is unnecessary, and would only cause confusion and generate disputes. (Staff BOE, p. 17)

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incumbent could make the combination more efficiently than the entrant." *Verizon*, 535 U.S. at 538.

UNE Issue 18a: Should AT&T and its HBSS be required to be on the same LSOG version?

SBC's Issue Statement: Whether SBC is obligated to modify its OSS to accommodate AT&T and its third party agent and their inter-CLEC communications to enable the HBSS to place orders on AT&T's behalf for Line Splitting?

AT&T has taken exception to the PO's conclusion on this issue that SBC should not be required to eliminate its "same version" policy that requires AT&T and a High Bandwidth Service Supplier ("HBSS") with which it partners to offer combined voice and data service via line-splitting, to be on the same LSOG version in order to place orders via Electronic Data Interface ("EDI"). (AT&T BOE, pp. 50-55)

The PO states that "It appears that AT&T maintains SBC should provide this service to AT&T without charge. We do not agree with AT&T on this position and we adopt the language as proposed by SBC to resolve this issue." (PO, p. 79) Staff, in its BOE, suggests that if AT&T states that is willing to pay SBC for the OSS modification costs necessary for SBC to accept EDI orders from AT&T and its HBSS partner when they are not on the same LSOG version, then the Agreement should require SBC to make the OSS modifications to enable it to take such orders. (Staff BOE, pp. 17-18) While AT&T appreciates Staff's suggestion, AT&T does not believe that it should be required to pay for any OSS modifications that may be necessary to enable AT&T and its HBSS partner to place EDI orders without being on the same LSOG version. The reason that AT&T should not be required to pay for such modification costs is that the present "same versioning" policy is discriminatory and anticompetitive, because SBC's retail operations and SBC's data affiliate, or an HBSS (data CLEC) with which SBC might partner to offer combined voice and data service, are not subject to the "same version" policy. Therefore, SBC retail and SBC's data affiliate, or SBC retail and an HBSS partner, can use EDI to submit orders without being on the same LSOG version, and do not need to use slower, less efficient means

such as facsimile or the web-based Graphical User Interface to place orders. AT&T addressed the discriminatory nature and anti-competitive impacts of SBC's "same version" policy at length in its BOE (pp. 50-54) as well as in its Initial Brief (pp. 145-47).

SBC is required to offer non-discriminatory access to its OSS. AT&T should not be required to reimburse SBC Illinois for modifications to its OSS that are necessary to correct a situation that is discriminatory and anticompetitive in order to give AT&T (and its HBSS partner) the same access to SBC's OSS that SBC retail, SBC's affiliates and SBC's own HBSS partners enjoy. Accordingly, UNE Issue 18a should be resolved in accordance with AT&T's exceptions to the PO, and the Commission should direct that AT&T's proposed additional language be added to Section 9.2.2.5.1 of the Agreement. (See AT&T's Proposed Replacement Language for the PO at AT&T BOE, pp. 54-55)

UNE Issue 24:

> **Issue 24(a): Should SBC be required to deploy custom routing for AT&T based on AT&T's proposed schedule or must AT&T order custom routing via the BFR process?**
>
> **Issue 24(b): In what manner should SBC be required to provide customized routing associated with UNEs?**

SBC takes exception to the Proposed Order's conclusions on UNE Issue 24 because, SBC contends, the time it takes to implement requests for customized routing depends on the "scope and size of the request." (SBC BOE, pp. 27-28) SBC's "remedy" is to allow SBC to "tailor the provisioning interval to the specific requirement of the job." (SBC BOE, p. 28) SBC's proposed language, which it recommends be adopted, would divert all AT&T requests for custom routing to the BFR process – a process which does not impose any time limitation on SBC's obligation to fulfill AT&T's custom routing requests.

Contrary to SBC's arguments, the language the PO adopts does, in fact, take into account the fact that the larger the scope and size of the request, the more time it will take to implement, and adopts a graduated time scale. Moreover, in no case does the language the PO adopts require SBC to implement any of AT&T's custom routing requests in fewer than 38 business days – almost two full months. The adopted language also provides that SBC will implement all custom routing requests in no more than 60 business days, unless the parties mutually agree that more time is acceptable. This gives SBC three full months to implement custom routing requests. Surely this is enough time to implement the necessary switch translations and routing instructions.

In fact, not only are the timeframes adopted by the PO reasonable, SBC itself proposed them (and therefore agreed they are reasonable and workable). As AT&T discussed in its Initial Brief, the custom routing schedule AT&T proposes in its language for Section 9.2.6.1.7.2 (and which is adopted by the PO) was proposed by SBC's own parent company and was implemented by SBC in California. (See AT&T Ex. 6.0, p. 79; AT&T Init. Br., pp. 156-157)

Accordingly, AT&T's proposed language for Section 9.2.6.1.7.2 should be adopted to ensure AT&T receives custom routing in a timely fashion consistent with the implementation schedule SBC has agreed to elsewhere in its thirteen state region.

G. INTERCARRIER COMPENSATION ISSUES

Intercarrier Compensation Issue 1: Should the terms of Article 21 apply to traffic where AT&T is using ULS-ST provided by SBC Illinois?

The PO erroneously recommends adoption of SBC Illinois' proposed ULS-ST reciprocal compensation rates. AT&T filed exceptions on this recommended decision. While ruling in support of SBC Illinois, however, the PO correctly finds that SBC Illinois misinterpreted the Commission's Order in Docket 00-0700. SBC Illinois' exceptions on this issue should be rejected.

SBC's assertion that its failure to comply with the Commission's Order in Docket 00-0700 should have no bearing on the Commission's decision on this issue is utterly meritless. It is undeniable that SBC's rejection of the Commission's directives in Docket 00-0700 is the genesis of this issue – a fact that SBC acknowledges at page 30 of its Brief on Exceptions. Indeed, if SBC Illinois had complied with the Commission's mandate in Docket 00-0700, the parties would not even be arbitrating this issue at all. Hence, the direct connection between SBC's compliance shenanigans in Docket 00-0700 and the existence of this instant issue absolutely merits Commission acknowledgement in its final Order here.

As correctly discussed in the PO, SBC modified its reciprocal compensation rate structure in direct defiance of the Commission's Docket 00-0700 Order which explicitly directed SBC not to do so. In doing so, SBC unilaterally overturned elements of the Commission's Dockets 96-0486/0569 Order which provided for the ULS-ST rate structure that was in place prior to SBC's Docket 00-0700 "compliance" filing. Ameritech's own cost studies in Dockets 96-0486/0569, which were approved by the Commission with modifications, supported the need for a ULS_ST reciprocal compensation rate that was different from the facilities based reciprocal compensation rate. The tariffs Ameritech filed in compliance with the Docket 96-0486/0569

Order contained a rate of $.0011 for ULS-ST reciprocal compensation and a higher rate for facilities-based reciprocal compensation, which were the rates in effect when the Commission issued its Order in Docket 00-0700. SBC subsequently opted to defy the Commission's Order in Docket 00-0700 and nullify this rate differentiation by unilaterally eliminating the ULS-ST reciprocal compensation rate of $0.0011 in its Docket 00-0070 "compliance" filing.

The ULS-ST reciprocal compensation rates that the Commission adopted in Dockets 96-0486/0569 were preserved by the Commission in its Order in Docket 00-0700. Clearly, had SBC not directly defied the Commission in its Docket 00-0700 "compliance" filings, we would not be arguing this issue today in this proceeding. In fact, to adopt SBC's proposal in this proceeding would be tantamount to rewarding SBC for failing to Comply with the Commission's Order in Docket 00-0700. This is unthinkable.

SBC now seeks to sweep its Docket 00-0700 "compliance" mess under the rug. SBC even goes so far as to urge the Commission to dismiss the PO's correct finding of SBC's wrongdoing. SBC's repeated pleas to the Commission to ignore SBC Illinois' blatant failure to comply with the Docket 00-0700 Order suggests that SBC is painfully aware of the direct nexus between those transgressions and this issue. SBC is therefore wrong when it asserts "the issue that the Commission must decide does not require the Commission to reach that question." (SBC BOE, p. 31) Indeed, the Commission does not need to address this issue because this is the very issue AT&T raised in its petition for arbitration. If the issue is resolved to find that SBC violated the Commission's Order in Docket 00-0700 by removing the ULS-ST reciprocal compensation rate, then the Commission must adopt AT&T's proposal, which is the only rate supported by Commission-approved cost studies. Not only should the Commission find that SBC defied the Commission's Order in Docket 00-0700 by removing the ULS-ST reciprocal

compensation rate, but the Commission should also preserve the $0.0011 ULS-ST reciprocal compensation rate in its final arbitration decision in this docket. Accordingly, SBC's exception on this issue should be rejected.

Intercarrier Compensation Issue 8(b)

> **AT&T Issue: Do AT&T's switches meet the requirements of 47 C.F.R. 51-711(a)(3), such that SBC Illinois-Illinois shall compensate AT&T for termination at the tandem rate?**
>
> **SBC Issue: Should AT&T be entitled to a single rate element which includes tandem rate element, even though the tandem may not be used?**

Relying upon extensive unrebutted factual evidence and the law, the PO correctly finds that AT&T's switches should continue to be treated as tandems for reciprocal compensation purposes. (PO, pp. 139-141) SBC Illinois excepts to this finding. SBC's exception is without merit and must be rejected.

As the Commission knows, AT&T's switches are classified today as tandems for reciprocal compensation purposes. In support of its position that its switches remain tandems, AT&T presented considerable factual evidence, including network maps showing the coverage of its switches.[17] What was SBC Illinois' response to all of this evidence? ***Nothing***. SBC submitted no evidence whatsoever supporting its theory that AT&T's switches no longer should be considered tandems.[18] Indeed, SBC even agrees with AT&T's factual evidence: "It is also undisputed that AT&T has shown that its switch *is capable of serving* a geographic area comparable to the area served by SBC Illinois' tandem switch." (SBC BOE, p. 32)

[17] See AT&T Ex. 2.0, p. 158; AT&T Exs. 2.7 – 2.10; AT&T Init. Br., pp. 262-272.

[18] SBC filed absolutely no testimony addressing these facts, leaving AT&T's evidence unrebutted. (See SBC Ex. 6.0, p. 44, where SBC witness Mr. Mindell stated the SBC will only offer legal arguments on the issue.)

SBC, however, has decided that AT&T needs to make an additional showing that is neither contemplated nor authorized by federal law. SBC Illinois contends that AT&T has to show the exact location of its customers that are being served by its switches, something that is entirely unsupported by the FCC's rules. (SBC BOE, p. 32)

As discussed in great detail in its initial and reply briefs, AT&T provided evidence showing that it has deployed switches to serve areas comparable to those areas served by SBC's tandem switches. In particular, the evidence shows that, as the FCC's rule contemplated CLECs would do, AT&T deployed switches and obtained transport or "dedicated access" facilities to connect the switches to SBC end offices and to customers, so that AT&T's switches occupy a position in the network that is comparable to SBC's tandems, which are also linked via transport to end offices. (AT&T Init. Br., pp. 262-272) With respect to the geographic coverage of the switches, AT&T explained that it is capable of providing services to any person within its service area and has established a network that serves a geographic area at least as wide as SBC's. Id. Using testimony and maps demonstrating the areas that AT&T's switches serve and comparing those areas to the areas served by SBC's tandem switches, AT&T explained that its switches serve customers throughout an area "the same or greater than" that served by each of SBC's tandem switches in Illinois. Id. Based on this evidence, AT&T is entitled to charge SBC a rate equal to SBC's tandem rate.

The Staff agrees with AT&T. According to Staff, "it is clear from the FCC's rules and the FCC's Intercarrier Compensation NPRM that whether or not AT&T is entitled to the tandem interconnection rate can be determined based on the geographic area served by AT&T's switches." (Staff Init. Br., p. 96) Staff criticized SBC's theory that the FCC's rules can be ignored and that AT&T has to somehow replicate the inefficient incumbent network design

(complete with tandem switches subtending end office switches, something no CLEC ever has done) in order to receive tandem treatment:

> SBC has, however, proposed language that does not permit AT&T to charge SBC's tandem rate for traffic AT&T terminates unless AT&T's terminating traffic flows through an actual tandem. Thus, under SBC's proposal the interpretation of the FCC's rule regarding geographic service areas is irrelevant. For example, if AT&T deployed a switch for each of SBC's tandems that served every existing SBC customer currently served by each of SBC's tandems, AT&T would not, under SBC's proposed language, be able to charge the tandem rate unless it used tandem switches. (Id.)

The Commission should heed the Staff's cogent testimony on this issue, since it is clear that SBC's theory has nothing to do with the FCC's governing rules, but everything to do with its seven-year campaign to not pay AT&T tandem reciprocal compensation when its switches perform this function.

As Staff points out, SBC clearly misreads the FCC's governing rules. FCC Rule 711(a)(3) requires AT&T to show that its switches "serve a geographic area" comparable to that served by SBC's tandems. By its plain terms, the FCC Rule does not require AT&T to show that its switches "serve customers" in areas comparable to those served by SBC's tandems. And a CLEC can show that it "serves a geographic area" without disclosing the locations of its customers by demonstrating, as the text of the FCC's *Local Competition Order* suggests, that it has deployed its network in a manner that allows it to terminate traffic from SBC's customers over an "area" comparable to the territory to which SBC's tandems terminate traffic.[19] *In the*

[19]The Florida Commission, illustrating this principle, analogized the difference between a CLEC's service of "geographic area" and service of customers to a landscaping business:

> A particular landscaping company could advertise that it serves Tallahassee and the surrounding area. Of course, this company may not have customers within every neighborhood of this area, but it is capable and prepared to serve anyone within each of these neighborhoods. In other words, this company has invested in the equipment necessary to serve any prospective customer within each of these neighborhoods. The number and location of customers that actually subscribe to this company's service will

Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-185, FCC 96-325, First Report and Order (rel. Aug. 8, 1998), par. 1090.

In fact, as discussed in AT&T's initial and reply briefs, the FCC has itself recently confirmed that its Rule 711(a)(3) does not require, as SBC claims here, that a CLEC must provide evidence of its customer locations in order to qualify for the tandem rate. In July, 2002, the FCC conducted an arbitration proceeding between Verizon and AT&T and another carrier for the state of Virginia. In that arbitration, Verizon raised precisely the same legal argument that SBC raises here, claiming that FCC Rule 711(a)(3) requires that "competitive LECs must demonstrate that their switches are actually serving, rather than merely capable of serving, a geographic area comparable to that of Verizon's tandem," and that "'[a]t best, AT&T has shown that its switches may be *capable of serving* customers in areas geographically comparable to the areas served by Verizon's tandems."[20]

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vary depending upon marketing success, but that does not change the fact that Tallahassee is the *area* it *serves*.

Order On Reciprocal Compensation, *In re Investigation into appropriate methods to compensate carriers for exchange of traffic*, 2002 WL 31060525, at *8 (Fla. PSC Sept. 10, 2002) (*"Fla. PSC Reciprocal Compensation Order"*).

[20]Federal Communications Commission, CC Docket No. 00-0251, *In the Matter of the petition of AT&T Communications of Virginia, Inc., pursuant to Section 251(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, 17 FCC Rcd. 27039 (rel. July 17, 2002), par. 309 ("*Virginia Arbitration Decision*"). The Chief of the FCC's Wireline Competition Bureau conducted the arbitration and issued the order. Under FCC rules, the FCC staff, when acting on delegated authority (as it did in the *Virginia Arbitration Decision*), has "all the jurisdiction, powers and authority conferred by law upon the Commission," and "any action taken pursuant to delegated authority shall have the same force and effect . . . as actions of the Commission." 47 C.F.R. § 0.203. Thus, the Commission should reject SBC's red herring contention that this decision should be ignored (or treated with little deference) since it somehow did not come from the actual FCC commissioners. (SBC BOE, pp. 37-38) The *Virginia Arbitration Decision* was, indeed, the FCC's decision as a matter of law.

The FCC expressly rejected the ILEC's claim, and found that under Rule 711(a)(3) the "determination whether a competitive LEC's switch 'serves' a certain geographic area does not require an examination of the competitor's customer base." *Virginia Arbitration Decision*, par. 309. Rather, the FCC "agree[d] with AT&T . . . that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch." Id.

The FCC's interpretation of its own regulations is obviously entitled to great deference,[21] and the FCC's holding compels rejection of SBC's claim. That interpretation plainly makes sense and serves the goals of the 1996 Act. The entire purpose of an interconnection agreement is to allow CLECs to *gain* customers. To forbid CLECs from charging a reciprocal compensation rate equal to that charged by the ILEC unless they could show that they had already won a geographically dispersed customer base would run squarely contrary to the Telecommunications Act's goals to encourage local competition by every legally possible means. Verizon Comm. Inc. v. FCC, 535 U.S. 467, 489 (2002). As the FCC's *Virginia Arbitration Decision* concluded, Rule 711(a)(3) does "not depend upon how successful the competitive LEC has been in capturing a 'geographically dispersed' share of the incumbent LEC's customers." Such a standard would "penalize new entrants," because the CLEC necessarily serves far fewer customers and deploys its facilities in a different manner than the incumbent LEC. A CLEC could never show that it will serve the same number of customers over the same geographic area as the monopoly ILEC now serves, and thus the standard proposed by SBC would in practice forever deny CLECs the ability to collect the same tandem rate that CLECs will be paying to the SBC.

[21] See U.S. West Comm. v. Washington Utils. & Transp. Comm'n, 255 F.3d 990, 998 (9th Cir. 2001).

Further, in the *Virginia Arbitration Decision*, the FCC found that its interpretation of Rule 711(a)(3) is both consistent with its text and far easier to apply than the rule advocated here by SBC. Like Verizon in the *Virginia Arbitration* case, SBC never describes how many or how dispersed a CLEC's customers would have to be before being deemed comparable to the ILEC. (See SBC Init. Br., p. 17) Indeed, the *Virginia Arbitration Decision* found that the "customer dispersion" rule proposed by Verizon had no "specific standard" that could easily be applied by state commissions.[22] The FCC's rule sensibly avoids those dilemmas by using service of a geographic area as an "appropriate proxy." *Local Competition Order*, par. 1090.

Given the FCC's recent interpretation of Rule 711(a)(3), the few cases cited by SBC in support of its claim that AT&T was required to introduce evidence of customer location would be irrelevant even if they were on point, for all of them pre-date the FCC's *Virginia Arbitration Decision*. But those cases are plainly inapposite.

SBC most pointedly relies on the unpublished decision in MCI Telecomms. Corp. v. Illinois Bell Tel. Co., 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999), where the court upheld the Commission's factual finding that the end office rate was appropriate because the CLEC "expressly refused" to introduce any "empirical data" on its switches' geographic reach. Notably, the court cited findings of the Commission that distinguished MCI from another carrier – which was AT&T's affiliate TCG – that *had* demonstrated that it *was entitled to* the tandem rate. Id. TCG had introduced evidence that included "a map showing geographically widespread deployment of various nodes in its network"– precisely the same type of evidence that AT&T introduced here and which was correctly accorded great weight in the PO in this

[22] *Virginia Arbitration Decision*, par. 309; see also *Fla. PSC Reciprocal Compensation Order* at *7. Likewise, SBC also proposed no specific standard that would allow CLECs to show that their customers are sufficiently dispersed in a manner that would be comparable to the ILECs' customer dispersion patterns.

case. Id. Thus, by recognizing that state commissions may properly rely on evidence of network coverage like that relied on by AT&T here, MCI v. Illinois Bell fully supports AT&T's and the Staff's position.

Even if the MCI v. Illinois Bell case were relevant, SBC never discusses or attempts to refute the numerous federal court cases that are adverse to its position and that have affirmed a state commission's determination that the tandem rate is appropriate. Indeed, another court of appeals addressed this issue and reversed a state commission that had awarded only the end office rate to a new entrant. See U.S. West Comm., 255 F.3d at 998. After holding that the state commission decision, which was based on its finding that the new entrant's switch functioned like the incumbent's end office switch, was inconsistent with the Act and FCC Rule 711(a)(3), the court agreed that the record showed that the new entrant's switches "serve a geographic area comparable to the area served by [the ILEC's] tandem switches." Id. at 996-98. Even though the court nowhere discussed evidence of customer locations, the court directed the entry of judgment for the new entrant, and the payment of the tandem rate. Id.

In other cases as well, including very recent cases regarding SBC's affiliates in Indiana and Ohio, federal courts have repeatedly affirmed state commissions that awarded (as this Commission did for AT&T/TCG previously) the tandem rate to the CLEC. See Indiana Bell v. McCarty, 2002 WL 31803448 (S.D. Ind. 2002); MCI Telecommunications Corp. v. Ohio Bell, Case No. C2-97-721 (S.D. Ohio 2003); U.S. West Comm. v. MFS Intelenet, Inc., 193 F.3d 1112, 1124 (9th Cir. 1999); U.S. West Comm. v. Minnesota Pub. Utils. Comm'n, 55 F. Supp. 2d 968, 979 (D. Minn. 1999); U.S. West Comm. v. Pub. Serv. Comm'n of Utah, 75 F. Supp. 2d 1284, 1290 (D. Utah 1999), *abrogated on other grounds as discussed in* Southwestern Bell Tel. v. Apple, 309 F.3d 713, 717 n.5 (10th Cir. 2002); see also Michigan Bell Tel. Co. v. Airtouch

Cellular, Inc., 2002 WL 551043, at *3-*4 (E.D. Mich 2002). In none of these cases did the courts require the new entrant to introduce evidence of its customer locations before affirming the award of the tandem rate.[23]

Under these decisions and the FCC's orders, AT&T's evidence easily satisfied the requirement of FCC Rule 711(a)(3) that its switches serve a geographic area comparable to that served by SBC's tandems. SBC's arguments should be rejected, and the Commission should adopt the PO's conclusion on Intercarrier Compensation Issue 8b as its final decision.

Intercarrier Compensation Issue 10(a): Should 8YY traffic compensation be determined by the jurisdiction of the traffic?

Intercarrier Compensation Issue 10(b): Should the 8YY service provider be required to suppress billing of terminating charges to the originating carrier, and provide a report of the traffic suppressed?

SBC Illinois proposes two modifications to the PO. While characterizing these proposals as "minor" and "not controversial", in fact SBC Illinois seeks to undo much of what the PO seeks to implement. (SBC BOE, p. 40) AT&T requests that these two modifications be rejected.

SBC specifically proposes that Section 21.9.1 be modified as noted below:

> Where ~~an~~ translated 8YY call originates from one Party and terminates on the network of the other Party (as the 8YY service provider) in accordance with Article 4, the Parties agree that the call will be treated as local or intraLATA toll, as applicable, for purposes of compensation pursuant to this Agreement.

[23]SBC cites as support for its position *Application of AT&T Communications of California, Inc., et al. for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company*, Public Utilities Commission of California Docket Nos. U 5002 C and U 1001 C (August 7, 2000). There, the California PUC imposed a tandem reciprocal compensation test on AT&T similar to the one advocated here by SBC. The courts, however, later invalidated the California's PUC tandem test. See MCI v. Pacific Bell, 2002 WL 449662 (N.D. Cal. March 15, 2002). Indeed, the court in MCI v. Pacific Bell cited with approval U.S. West Comm., where the Ninth Circuit held that AT&T need not meet a similar (and equally unlawful) test sought by U.S. West, a Bell Operating Company like SBC. Thus, SBC is using as support a California PUC decision which imposed a reciprocal compensation test that the federal courts have already held unlawful as applied to MCI. Such a test is, of course, equally unlawful if applied to another CLEC, such as AT&T.

The insertion of the word "translated" should be rejected. While it is true that AT&T and SBC will be sending translated 8YY calls, that is beside the point. Whether the originating or terminating carrier translates the call does not change the jurisdiction of the call. Moreover, SBC never presented any evidence that it does not possess the NXX code with which it can determine the jurisdiction. Hence there is no technical reason in the record supporting SBC Illinois' assertion here. Indeed, it is basic telecommunications practice that one party or the other must translate 8YY numbers in order to complete the call. In either case, SBC would have the NXX code for determining jurisdiction.

SBC's proposed language "in accordance with Article 4," should also be rejected. This language is objectionable to the extent that AT&T will be permitted to combine local/intraLATA and interLATA traffic, as AT&T and SBC today do in eight states, and as AT&T requests it be allowed to implement in Illinois under Intercarrier Compensation Issue 12. SBC Illinois' rationale for this language is so it can continue to forcibly separate out 8YY traffic between local and long distance trunks. (SBC BOE, p. 41) If AT&T happens to route an 8YY call to SBC in a way that utilizes one of these dual-use trunks, however, the jurisdiction of the call is not changed, so forcibly separating these calls as SBC Illinois requests here is technically and economically unsound, and really undoes the efficiencies gained by allowing combined trunking arrangements. Thus, SBC's proposed exception should be rejected.

H. COMPREHENSIVE BILLING ISSUES

Comprehensive Billing Issue 3: Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?

AT&T notes that it filed exceptions to the PO's conclusion on Comprehensive Billing Issue 3, and submitted both proposed replacement language for the PO's conclusions and proposed replacement language for Section 27.10.3 of the Agreement, which is the ICA section affected by this issue. (See AT&T BOE, pp. 111-116)

SBC makes one comment on, and proposes several modifications to, the language for Section 27.10.3 adopted by the PO. SBC asserts that the following two sentences that the PO would add to Section 27.10.3 "are not a worthwhile addition to the Agreement" (SBC BOE, p. 42):

> When AT&T has a billing dispute with a third party originating carrier who accessed through the SBC network, SBC will provide AT&T the OCN or other additional information. This will allow for AT&T to bill the proper carrier for termination on its switches.

However, SBC states that it does not object to the foregoing sentences so long as the first sentence is modified in several respects. (Id., pp. 42-43)

AT&T notes that the foregoing two sentences are not included in the language for Section 27.10.3 that AT&T proposed in its BOE. (See AT&T BOE, p. 115) Therefore, if AT&T's exception and proposed language for Section 27.10.3 are adopted by the Commission, SBC's concern about the foregoing two sentences is mooted. In the unfortunate event that the PO's language for Section 27.10.3 were adopted by the Commission, AT&T believes that the foregoing two sentences are appropriate. Particularly in the case of a billing dispute with a third party originating carrier, the originating carrier OCN for the call or calls in dispute (i.e., for which AT&T is attempting to bill the third party carrier for termination) may well be extremely

useful information for AT&T. That is because, as described in AT&T's BOE, the report that SBC is proposing to provide to AT&T with ACNA information does not contain individual call detail, but rather only total terminating minutes of use by ACNA, and thus may be insufficient to support AT&T's billings to an originating carrier and audits of those billings. (AT&T BOE, p. 113) Thus, in a dispute situation, in which a third party carrier is contesting that it was the originating carrier of a particular call or calls, receipt of the OCN information will likely be critical to establishing whether or not that carrier was in fact the originating carrier (and if that carrier did not originate the call, what carrier did).

SBC proposes that the first of the foregoing two sentences should be revised to read as follows:

> If AT&T is unable to resolve after reasonable good faith efforts a billing dispute with a third party originating carrier whose traffic transited SBC Illinois' network and was terminated on AT&T's network, SBC Illinois will, upon written request, provide AT&T the third party originating carrier's OCN (if that OCN resides in an SBC Illinois database) or other additional information. (SBC BOE, p. 43)

Certain aspects of SBC's revised language are objectionable, while other aspects of SBC's revised language are acceptable to AT&T:

1. "If AT&T is unable to resolve after reasonable good faith efforts a billing dispute . . . ." – this language is inappropriate and should be deleted. First, it is premised on the assumption that AT&T will engage in bad faith use of this provision of the Agreement (SBC BOE, p. 43), which is an unreasonable and objectionable assumption.[24] Second, requiring AT&T to go through a dispute resolution process with the purported originating carrier before requesting the OCN from SBC Illinois is likely to only delay the ultimate resolution of the

[24]Does anyone out there actually think that AT&T will "wantonly precipitate billing disputes and make no serious effort to resolve them" just as a device to get OCN information from SBC? (SBC BOE, p. 43) AT&T has better things to do with its limited time and resources.

dispute and the timely settlement of accounts. Third, and most important, as indicated above, the OCN information for calls terminated by AT&T is likely to be the most critical piece of information in resolving many disputes – if the purported originating carrier is disputing responsibility for the call(s) from the outset, the OCN information showing that that carrier in fact originated the call(s) in question may promptly and completely resolve the dispute.

2. "[O]n written request" – AT&T does not object to making written (as opposed to verbal) requests for OCN information so long as a written request can encompass electronic or facsimile means of communication typically used by the parties on a business-to-business basis.

3. "[I]f that OCN resides in an SBC Illinois database" – this limitation is inappropriate, and this language should be deleted. It must be remembered that Comprehensive Billing Issue 3 involves **only** calls that have transited SBC Illinois' switch and are then terminated by AT&T (if the call terminated by AT&T did not come through an SBC switch, then it would not be involved in this issue). Therefore, AT&T is dependent on SBC to provide the originating carrier information. (See AT&T BOE, pp. 111-114) Since the call will have transited SBC's switch, SBC must be responsible for providing the OCN information if called upon to do so – whether it "resides in an SBC Illinois database" or not. Otherwise, AT&T should be entitled to treat SBC Illinois as the originating carrier for the call. (Id., p. 112)

In summary, the Commission should resolve Comprehensive Billing Issue 3 by adopting AT&T's proposed language for Section 27.10.3 of the Agreement, as set forth on pages 115-116 of AT&T's BOE, and should revise the PO using the replacement language set forth at page 115 of AT&T's BOE. Should the Commission have occasion to consider the modifications to the language for Section 27.10.3 proposed in SBC's BOE, only the added provision specifying that AT&T will make "written request" for OCN information is appropriate.

Comprehensive Billing Issue 4

A. Should SBC-Illinois be required to provide AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC-Illinois?

B. Should SBC-Illinois be billed on a default basis when it fails to provide the 3rd party originating carrier to AT&T when AT&T is terminating calls as the unbundled switch user?

AT&T notes that although it generally agrees with the PO's resolution of Comprehensive Billing Issue 4, it submitted exceptions on this issue and proposed revisions to the language adopted by the PO for Sections 27.14.4 and 9.2.7.4.4 (of Schedule 9.2.7) of the Agreement. The principal point of AT&T's revisions is to specify that in the situation where AT&T is terminating call as an unbundled user of SBC switching (i.e., is using ULS leased from SBC), SBC Illinois must be responsible to provide originating carrier OCN information for all calls passing through SBC's switch to be terminated by AT&T, not just the OCN for those calls originated by other carriers also using SBC's unbundled local switching. (See AT&T BOE, pp. 116-118)

SBC proposes three revisions to the language adopted by the PO for Section 27.14.4 and Section 9.2.7.4.4 of Schedule 9.2.7 of the Agreement. (SBC BOE, pp. 45-46) SBC's first revision – to include a reference to completion of SBC's ULS Port OCN Project in Section 9.2.7.4.4 as well as in Section 27.14.4 – is acceptable to AT&T. In fact, AT&T proposed the same addition to Section 9.2.7.4.4 in its exceptions. (AT&T BOE, p. 118) Note that AT&T's exceptions revised the wording of the reference to the SBC ULS Port OCN Project in both Sections 27.14.4 and 9.2.7.4.4; for the reasons explained in AT&T's BOE, AT&T's revised language on this point should be used. (AT&T BOE, pp. 117-118)

SBC's second and third corrections are to replace the phrase "if SBC fails to provide the OCN of the originating carrier in the usage records it provides for AT&T" in Section 9.2.7.4.4 of

Schedule 9.2.7 with "In any instance where SBC fails to fulfill that duty"; and to insert "after AT&T makes such a request" in the last sentence of Section 9.2.7.4.4. AT&T does not object in principle to these two revisions; however, the first reference should be to "any instance in which SBC fails to fulfill those duties", to make it clear that the sentence in which it is inserted applies to the provision of OCN information for both calls originated by third-party carriers using SBC's unbundled switching and calls originated by third-party carriers that are not using SBC's unbundled switching. With that minor modification, SBC's two corrections can be made to the language proposed by AT&T for Section 9.2.7.4.4 (see AT&T BOE, p. 118). With SBC's two proposed revisions, the language proposed by AT&T for Section 9.2.7.4.4 of Schedule 9.2.7 of the Agreement would read as follows:

> Section 9.2.7.4.4 – SBC will include the OCN of the originating carrier in the usage records it provides for calls originated by third party carriers. SBC will include the OCN of the originating carrier in the usage records it provides for calls originated by third party carriers utilizing an SBC ULS Port that terminates to an AT&T ULS Port after SBC Illinois completes its ULS Port OCN project during the first quarter of 2004. In any instance in which SBC fails to fulfill those duties, AT&T will request again the OCN of the third party originating carrier. If SBC fails to provide the information of the originating OCN after AT&T makes such a request, then AT&T will treat it as though it was originated by SBC in accordance with the terms of Schedule 9.2.7 of this agreement.

I. OSS ISSUE

OSS Issue 2: Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate "as is" on UNE-P migration orders through a standard indicator on the orders?

The PO resolves this issue by concluding that SBC Illinois is required to allow AT&T to place "as is" orders for UNE-P migrations (i.e., to place orders with SBC to effect customer migrations to AT&T to be served via the UNE-P, without requiring AT&T to specify on the order each feature and functionality that the customer currently has from SBC), but that AT&T must reimburse SBC for AT&T's share (relative to other CLECs) of SBC's OSS implementation costs necessary to accommodate "as is" ordering for UNE-P. (PO, p. 164) AT&T took exception to the PO's conclusion that AT&T (and other CLECs) should be required to reimburse SBC for the OSS implementation costs necessary to accommodate "as is" ordering for UNE-P. The basis for AT&T's exception is that SBC Illinois offered "as is" ordering for UNE-P migrations (as well as "as specified" ordering) until as recently as October 2002, at which time SBC modified its OSS in a way that removed the "as is" ordering functionality for UNE-P migrations previously available to CLECs; accordingly, AT&T and other CLECs should not be required to bear the "OSS implementation costs" for SBC Illinois to restore an ordering functionality that SBC Illinois was providing up until about nine months ago. (See AT&T BOE, pp. 119-121)

SBC also took exception to the PO's conclusion on OSS Issue 2. Specifically, SBC contends that it should not be required to offer "as is" ordering at all, even if it is fully compensated by AT&T and other CLECs (as the PO would require) for the OSS implementation costs to again make this functionality available. (SBC BOE, pp. 47-54) It is difficult to understand why SBC is taking exception to the PO's conclusion on this issue since SBC

essentially won this issue at the PO level. More specifically, it is difficult to understand why SBC would object to providing an ordering functionality for which it is fully compensated for its implementation costs (again, as the PO requires). SBC's objection to being required to provide "as is" ordering functionality even if compensated for the costs makes it clear that SBC recognizes its elimination of "as is" ordering functionality for UNE-P in October 2002 has given SBC a competitive disadvantage over CLECs using the UNE-P. In any event, SBC's exception to the PO's conclusion must be rejected.

SBC is incorrect that the PO's conclusion is incorrect on the law. (SBC BOE, pp. 47-50) In fact, although AT&T did not in its BOE quibble with the manner in which the PO reached its conclusion that SBC should be required to provide "as is" ordering for UNE-P migrations – since the PO's ultimate conclusion on this point was acceptable to AT&T – the PO could have reached its conclusion on this point in a much more direct manner. AT&T agrees with SBC that "Under established rules of statutory construction, 'where clear and unambiguous, statutory language must be enforced as enacted, and a Court may not depart from its plain language by reading into its exceptions, limitations or conditions not expressed by the legislature.'" (SBC BOE, p. 48) AT&T also agrees with SBC that "there is no ambiguity in Section 13-801(d)(6) [of the Public Utilities Act] as it relates to the 'as is' ordering issue." (Id.) Nothing could be plainer than the unambiguous language of Section 13-801(d)(6) (220 ILCS 5/13-801(d)(6)):

> A requesting telecommunications carrier may order the network elements platform as is for an end user that has such existing local exchange service without changing any of the features previously selected by the end user.

The statute uses the industry term "as is" in referring to ordering the network elements platform ("A requesting telecommunications carrier may order the network elements platform *as is* for an end user . . . .") As the court stated in Illinois Power Co. v. Johnson, 116 Ill. App. 3d 618, 627-

28 (4th Dist. 1983), "Commercial, trade, or professional terms used in a statute which has reference to, or deals with, the trade, business, or profession are construed in the sense in which such terms are generally used or understood in the trade, business, or profession, even though such meaning may differ from their common or ordinary meaning."

Further, despite the PO's statement that Section 13-801(d)(6) "in whole" addresses the "provisioning stage" of CLEC orders for UNE-P (PO, p. 163), the plain language of the statute quoted above expressly refers to ordering the UNE-P. Similarly, SBC's argument that Section 13-801(d)(6) is not applicable to the question of "as is" ordering because the purpose of the section is to require the UNE-P to be provisioned within a specified time interval, and without disruption to the end user (SBC BOE, pp. 48-49) is misplaced: The first sentence of Section 13-801(d)(6) addresses the former point and the third (last) sentence of Section 13-801(d)(6) addresses the latter point, but the second sentence of Section 13-801(d)(6) (quoted above) unambiguously entitles a CLEC to *order* the UNE-P "as is".

SBC's attempt to find support in the Commission's Section 271 Order (Docket 01-0662), which the PO properly rejected, is also without merit. (SBC BOE, p. 48, note 10; see PO, p. 164) The Commission made it clear in the Docket 01-0662 Order (at par. 3186) that that docket was not the place to address "the precise content of an incumbent LEC's obligations to its competitors", including specifically whether SBC should be required to provide for "as is" ordering for UNE-P migrations. (See AT&T Init, Br., pp. 307-08) In contrast, this arbitration proceeding *is* intended to adjudicate the specific rights and obligations of AT&T and SBC to each other in their interconnection relationship.[25] As the PO stated in its conclusion on UNE

[25]Moreover, as pointed out at page 307 of AT&T's Initial Brief, in the Docket 01-0662 Order, the Commission characterized "as is" ordering for UNE-P as "new ordering and processing

Issues 23 and 24, "We agree with AT&T that [the] Section 271 proceeding had a limited purpose and, in fact, it is of very limited use as precedent for purposes of this proceeding." (PO, p. 87)

SBC's argument that "as is" ordering was not provided for in the "Plan of Record" resulting from Docket 00-0555 or among the disputed issues in Docket 00-0592 (SBC BOE, pp. 49-50) misses a fundamental point – SBC was already providing for "as is" ordering for UNE-P migrations (as well as "as specified" ordering, see AT&T Ex. 5.0, p. 12, and Tr. 267-68) up until October 2002. Thus there was no reason for CLECs to insist on the addition of "as is" ordering through the Plan of Record or by raising a disputed issue in Docket 00-0592. Also misplaced is SBC's argument that AT&T is requesting (and the PO is requiring) SBC to provide access to an "enhanced or superior functionality" or to a "yet unbuilt superior" network by requiring "as is" ordering (SBC BOE, p. 50) – again, because up until October 2002, SBC Illinois provided for both "as is" and "as specified" ordering. Indeed, **the current interconnection agreement between AT&T and SBC Illinois, entered into in January 1997, provides for as-is ordering.** (AT&T Ex. 5.0, pp. 16-17)

SBC Illinois is also wrong in contending that there is insufficient evidence to support a requirement for "as is" ordering for UNE-P migrations. (SBC BOE, pp. 50-52) AT&T presented substantial evidence on the benefits to it, as a competitor of SBC Illinois, of having the "as is" ordering functionality available, and of the problems and errors that can arise in having to use "as specified" ordering, in which all of the end user's current features and functionalities must be specified in the order, thereby multiplying the potential for mistakes. (See AT&T Ex. 5.0, pp. 5-11, 13-16; AT&T Init. Br., pp. 305-06) While AT&T acknowledges that there can be arguments both pro and con as to the ultimate benefits of "as is" ordering, there is

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capabilities", and thus apparently was unaware that SBC Illinois had provided "as is" ordering for UNE-P until October 2002.

unquestionably sufficient evidence in this record to support a conclusion by the Commission that SBC Illinois should be required to offer "as is" ordering for UNE-P migrations.

Finally, the arguments that SBC Illinois claims the PO ignored do not support SBC's position. (SBC BOE, pp. 52-54)

? SBC claims that the Commission should not change the result reached in industry collaboratives, and reiterates that "as is" ordering was not addressed in the Plan of Record or among the disputed issues in Docket 00-0592 (Id., pp. 52-53), but again ignores the facts that during this period (until October 2002), SBC provided for both "as is" and "as specified" ordering, and that its current interconnection agreement with AT&T provides for "as is" ordering. SBC also ignores the fact that, as the record shows, AT&T has raised the need to restore "as is" ordering functionality in the industry collaborative Change Management Process ("CMP"), only to have SBC reject this request and state that it would not be considered in the CMP.[26] (Tr. 268)

? SBC's assertion that offering "as is" ordering would be an expensive and difficult process that would require it to "tear apart" its systems (SBC BOE, p. 53) lacks credibility in light of the fact that SBC Illinois provided "as is" ordering until as recently as October 2002, and is in any event irrelevant since the PO concludes that AT&T (and other CLECs) should be required to pay for any OSS implementation costs.

? SBC's argument that "a two-party arbitration is not the proper place to introduce changes into the OSS" (Id.) conflicts with the facts that (as noted above) the Commission concluded in Docket 01-0662 that that generic case was not the proper forum to determine such specific matters, and that SBC Illinois has refused to consider restoration of "as is" ordering in the industry collaborative CMP. Thus, this arbitration, in which specific contractual rights and responsibilities are being determined, is an appropriate forum to focus on this issue.

? Finally, with respect to SBC's argument that "CLECs should specify the particular UNEs and features they wish to order" (Id., pp. 53-54), AT&T acknowledges that there is a possibility for errors inherent in the "as is" ordering process; however, AT&T has concluded that on balance (and it is, in AT&T's view, an overwhelming balance), this possibility for errors is far outweighed by the greater possibility of errors inherent in the "as specified" ordering process, coupled with the greater efficiency and convenience of the "as is" ordering process. In the words of Section 13-801(d))(6), AT&T is the "requesting

[26]The industry standard OBF activity type "W" ordering, i.e., "as is" ordering, is of course the product of an industry collaborative activity, the Ordering and Billing Forum. (AT&T Ex. 5.0, p. 5; AT&T Ex. 3.0, p. 10)

> telecommunications carrier" and ought to be the one to make the determination as to which ordering process is superior – not be told by SBC what's best for it!

In summary, the Commission should reject SBC Illinois' exceptions on OSS Issue 2, and instead should resolve this issue in accordance with AT&T's exceptions to the PO's conclusions.

Two other matters require attention with respect to this issue. First, SBC proposes certain changes to the language otherwise adopted by the PO for Section 33.5.14 of the Agreement. (SBC BOE, p. 54, note 13) AT&T reiterates its opposition to being required to pay OSS implementation costs to restore the "as is" ordering functionality. (AT&T understands that there would be typical non-recurring charges associated with placing "as is" orders, which it would expect to pay.) That having been stated, based on the limited explanation of its proposed changes provided by SBC, AT&T does not believe the proposed changes to be appropriate, because they would appear to be intended to expand the scope of the costs that AT&T would be required to pay beyond that intended by the PO. Further, there would not seem to be a reason to change "AT&T" to "the parties" in the second line of Section 33.5.14, as SBC proposes.

Second, Staff requests that the PO be revised to more completely summarize Staff's position on OSS Issue 2. (Staff BOE, p. 19) AT&T does not object to Staff's requested modification of the description of its position. AT&T does believe that the additional point that Staff wishes to add to the PO's summary of Staff's position is irrelevant to the resolution of OSS Issue 2.

J. PRICING ISSUES

Pricing Issue 5

Issue 5a: How should LIDB queries be defined in the Pricing Schedule?

Issue 5b: Should the prices for unbundled operator services – LIDB validations be included in the Pricing Schedule?

AT&T does not take issue with SBC's position that the revisions to SBC's LIDB tariff that were filed with the Commission on June 6, 2003 and allowed to go into effect on July 22, 2003, should be incorporated into the Pricing Schedule of the Agreement. (SBC BOE, pp.54-57)

CONCLUSION

For the reasons set forth in its Brief on Exceptions and in this Brief in Reply to Exceptions, AT&T Communications of Illinois, TCG Illinois and TCG Chicago request that the Commission modify the Administrative Law Judges' Proposed Arbitration Decision in accordance with AT&T's exceptions, and that as so modified, the Commission adopt the Proposed Arbitration Decision as the Final Arbitration Decision in this docket. The Commission should reject the exceptions of SBC Illinois and Staff as set forth in this Brief in Reply to Exceptions.

Dated: August 14, 2003

Respectfully submitted,

AT&T COMMUNICATIONS
OF ILLINOIS, INC., TCG ILLINOIS and
TCG CHICAGO

By: /s/ Owen E. MacBride

Owen E. MacBride
Samantha C. Norris
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606
312-258-5680
312-258-5700 (facsimile)
omacbride@schiffhardin.com
snorris@schiffhardin.com

Cheryl Urbanski Hamill
Douglas W. Trabaris
AT&T Communications of Illinois, Inc.
222 West Adams Street, Suite 1500
Chicago, IL 60606
312-230-2665
312-977-9533 (facsimile)
chamill@att.com
dtrabaris@att.com

Attorneys for AT&T Communications of Illinois, Inc.,
TCG Illinois and TCG Chicago

CH1\4045152.1